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THE
MADRAS LAW JOURNAL.

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NOT TO BE REMOVED
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UNIFICATION OF THE BAR IN INDIA

SALIENT FEATURES OF AND VITAL LACUNAE IN THE BILL AS REPORTED BY THE JOINT SELECT COMMITTEE

By

MANILAL G. DESAI AND JAYANT RAMDATT DESAI,
Advocates, High Court, Bombay.

The Report of the Joint Committee on the Bill to amend and consolidate the law relating to Legal Practitioners and to provide for the constitution of State Bar Councils and an All-India Bar was presented to the Lok Sabha on the 28th March, 1960. The Committee consisted of 45 members of Parliament, 30 from the Lok Sabha and 15 from the Rajya Sabha. Shree C. R. Patabhi Raman, a Senior Advocate of the Supreme Court, was appointed its Chairman. Twenty-five memoranda/representations on the Bill were sent by different associations and individuals. Oral evidence, however, was not recorded by the Committee. The Committee held in all 10 sittings. The first sitting was held on 18th December, 1959 and the final sitting on 21st January, 1960. On the last date the report of the Committee was considered and adopted.

The Bill was introduced in the Lock Sabha on the 19th November, 1959. The salient features of the Bill in the light of the recommendations of the Joint Select Committee are given below :—

(i) Since there will be only 'one' class of legal practitioners hereafter, *viz.*, Advocates, the proposed enactment may appropriately be called the "Advocates Act of 1960", instead of the "Legal Practitioners' Act." It will extend to the whole of India, except the State of Jammu and Kashmir.

(ii) As Delhi, the seat of Supreme Court of India, has assumed special importance in the legal profession, it will have a separate Bar Council.

(iii) The Committee are of opinion that the Bar Councils should be fully autonomous bodies and as such Judges should not be represented thereon. They have therefore dropped the representation of High Court Judges on the State Bar Councils and of Supreme Court Judges on the Bar Council of India.

(iv) (*a*) The strength of elected members of the State Bar Councils is to be increased from 10 to 15 in case of Assam and Orissa. Delhi Bar Council will have also 15 elected members. The strength of the other State Bar Councils is raised from 15 to 20.

(b) In case of Delhi, the Additional Solicitor-General of India and in case of the State Bar Councils, the Advocate-General of the State, will be Ex-Officio members.

(c) Every State Bar Council will be represented by one member on the Bar Council of India. The distinction made in the original Bill for larger representation between States which have a large number of Advocates and those which have a small number of Advocates has been removed.

(v) The Bar Council of India will accordingly be composed of one representative from each State Bar Council, including the Delhi Bar Council. The Attorney-General of India as also the Solicitor-General of India will be the Ex-Officio members of the All-India Bar Council.

(vi) The Chairman and Vice-Chairman of both the State Bar Councils and the Bar Council of India will be elected by the respective Bar Councils in such manner as may be prescribed by rules made under the said Act.

(vii) In order to ensure representation to all shades of opinion, the mode of election to the State Bar Councils will be in accordance with the system of proportional representation by means of a single transferable vote.

(viii) In view of the above recommendation that election will be in accordance with the system of proportional representation, it is not necessary to give special representation to Advocates practising on the Original Side of the Bombay and Calcutta High Courts, on the respective Bar Councils, as previously provided in the Bill on the plea of their being in a 'minority'.

(ix) Since there will be a separate Bar Council for Delhi as stated in para. (ii) above, special representation given to the Supreme Court Bar Association on the Bar Council of India has been omitted.

(x) The functions of the State Bar Councils have been enlarged. They will now include, (a) Safeguarding of rights, privileges and interests of Advocates on the roll, (b) Promotion and support of law reform and (c) Constitution of a Fund for givings financial assistance to indigent and disabled Advocates.

(xi) An Advocate will not be enrolled on the roll of more than one State Bar Council, but an Advocate already on the roll of one High Court will have the option to enroll himself on the State Bar Council within whose jurisdiction he proposed to practise. He will have, however, the right to get his name transferred from one State roll to another on account of his changing the venue of his practice. (At present the enrolment of Advocates is done by the High Courts, but on this Bill becoming law, this power of enrolment will be delegated to the State Bar Councils).

(xii) The seniority of a Vakil, Pleader or an Attorney who is enrolled as an Advocate, whether before or after the commencement of this enactment, will be determined according to the date of his entry in the register of Vakils, Pleaders or Attorneys. The time limit for their applying for enrolment as an Advocate on the State roll is extended from one year to two years on the Act coming into force.

(xiii) Besides obtaining a degree in Law, a course of practical training will be made compulsory for new entrants to this profession, but no additional qualification of a degree in Arts, Science or Commerce will be necessary for enrolment as an Advocate.

(xiv) The enrolment fee to be paid to the State Bar Council is reduced from Rs. 500 as originally proposed to Rs. 250.

(xv) As regards disciplinary action for misconduct against an erring Advocate, in addition to an appeal to the Bar Council of India from the order of the Disciplinary Committee of the State Bar Council, an appeal to the Supreme Court of India from the order of the Disciplinary Committee of the Bar Council of India, is made available to the Advocate concerned within 60 days from the date on which the said order is communicated to him.

(xvi) Clause 52 (a new clause added) makes it clear that the power of the Supreme Court to make rules under Article 145 (*a*) of the Constitution of India in respect of persons practising before that Court is not affected.

Some clauses of the original Bill have been redrafted and rearranged. Five new clauses have been added which bring the total number of clauses to 57.

It will be seen from the above that as a result of the deliberations of the Joint Select Committee, the Bill has been considerably improved in several respects, *e.g.*, (i) Bar Councils have been made fully autonomous bodies, (ii) Proposal for the reservation of seats on the Bar Councils has been dropped, (iii) Representation given to the Supreme Court Bar Association has been omitted, (iv) Functions of the State Bar Councils have been enlarged, (v) enrolment fee of an Advocate is reduced from Rs. 500 to Rs. 250. (vi) Provisions relating to the seniority of Vakils, Pleaders and Attorneys and of transferring names of Advocates from one State roll to the other have been clarified and (vii) An appeal to the Supreme Court of India in disciplinary matters, has been provided for.

It may be mentioned that in view of the bifurcation of the State of Bombay into two States of Maharashtra and Gujarat, the words "Maharashtra" and "Gujarat" in place of "Bombay" will have to be inserted in section 3 (1) (*a*) dealing with the formation of the States Bar Councils.

It may be stated here that there is no indication in the Objects and Reasons of the Bill why it should not be made applicable to the State of Jammu and Kashmir. The jurisdiction of the Supreme Court of India has been extended to that State and it would be proper if provisions of the proposed Act are made applicable to the said territories as they are an "intergal part of India".

It is interesting to note that one of the members of the Committee, Shree W.S. Barlingay, in a separate note, which is not a minute of dissent, has sugested that Bar Councils created by this Bill should take active steps to see that (i) legal work should be distributed amongst its members as equitably as possible and that (ii) every member of the profession is assured of a decent standard of living. These are, no doubt noble sentiments, but they are hardly practicable under our so-called Democratic State, where as the Hon'ble Member himself realizes, the doctrines of *laissez faire* and individual liberty go hand in hand. These ideas have, however, been put into practice mostly under Communist dispensation.

This brings us to the six minutes of dissent, appended to the Report by different members. They deal with vital lacunae in the Bill, *e.g.*, (i) Retention of heavy stamp duty for granting of Sanad to Advocates, (ii) Continuance of Dual System in the two High Courts at Bombay and Calcutta, (iii) Exclusiveness in the Bar, (iv) Provision enabling Barristers to enroll as Advocates without providing for reciprocity and (v) Provision for compulsory examination for being qualified for enrolment as an Advocate, etc. The first three of these lacunae being quite inconsistent with the avowed object of the said Bill, require further deliberation.

A person desirous of obtaining a Sanad to practise as an Advocate is, under the Stamp Act, required to pay a varied enrolment fee ranging from Rs. 10 to Rs. 100 to the Bar Council of which the person concerned desires to be a member. Under the proposed Act the enrolment fee has been definitely increased and fixed at Rs. 250.

The result will be that the Vakils and Pleaders practising in the mofussil Courts as also new entrants to this profession will be compelled to pay a large amount of money (stamp duty and enrolment fee) varying in different States as stated above.

According to one estimate, there were 26,495 Advocates and 39,632 Vakils and Pleaders in India in or about the year 1953 (*vide* minute of dissent of Shree Bakshi Tekchand appended to the Report of the All-India Bar Committee, 1953, at pages 43-44). This vast number of Vakils and Pleaders would be surely affected by this top-heavy payment of money for being enrolled as Advocates. A majority of those 39 thousand and odd number of legal practitioners would certainly find it extremely difficult, if not impossible to incur this prohibitive expenditure and would thus be indirectly prevented from getting themselves enrolled as Advocates. This would definitely militate against the cherished object of the Bill, *viz.*, Unification of the Bar at All-India level, for the simple reason that the State Bar Councils and the All-India Bar Council will remain open to the Advocates who are already on the roll of Bar Councils of the various States and to the Supreme Court Advocates and the fortunate few among the Vakils and Pleaders and new entrants who would be able to incur the heavy cost of enrolment.

The Joint Select Committee have expressed doubt that a provision in the Bill to abolish the stamp duty payable for obtaining Sanad to practise at the Bar may be of doubtful validity in view of the distribution in the Constitution of legislative powers relating to Stamp Duty, but have, at the same time recommended that State Governments might be persuaded to take such action as may be necessary so that no stamp duty in addition to the fee payable to the Bar Councils under this Bill is levied at the time of admission of Advocates.

Three dissident members of the Committee, Messrs. Hemraj, Santoshkumar Basu and S. C. Gupta have therefore in their minutes of dissent justly voiced their dissatisfaction against the attitude of helplessness shown by the majority in the Committee. They point out that the Centre has powers to legislate on the subject under some Entries under the Union and Concurrent Lists, which should be invoked to abolish the stamp duty. Leaving the matter to the discretion or rather the mercy of the States would not serve the purpose ; for the States would not be ordinarily amenable to forego this item of revenue easily available to them, for the recovery of which they have not to exert or incur any expenses. Hence the matter should not be allowed to rest as a mere recommendation. A way must be found out to abolish the exorbitant stamp duty, which is at present recovered from the entrants to the legal profession. The Law Commission have also remarked *inter alia* on this point as under :—

" We have not been able to discover any sound reason or principle for this levy (the stamp duty)......In our view this imposition is totally unjust and should be abolished ". (Fourteenth Report on Reform of Judicial Administration, Vol. I, at pages 574-575).

The most vital issue, however, on which the Committee has disappointed the people and persons in the legal profession in general in their expectations, is their omission to recommend the abolition or even modification of what is known as the "Dual System" prevalent on the Original Sides of the High Courts of Bombay and Calcutta. This system is wholly repugnant to the idea of a unified Bar with a common roll of Advocates entitled to practise in all Courts. The compulsory retention of the said system keeps the legal practitioners divided into two distinct classes of lawyers, *viz.*, Advocates and Solicitors in principle as well as in fact. This is really inconsistent with the fundamental object and *raison de etre* underlying the Bill. While the Bill was on the anvil of the Committee, it was at one stage thought that the Committee would, by a majority, recommend the abolition of the Dual System, but it appears that the "vested interests" prevailed and the tables were turned,

with the result that the Committee has by a majority retained the clauses relating to the Dual System as they appeared in the Bill leaving its abolition or its retention to the will of the respective High Courts. With all due respect to them, the Joint Select Committee have in doing so shirked their responsibility and put the High Courts concerned in an embarrassing position by putting this burden on them.

It cannot be gainsaid that this Dual System is a vestige and legacy of the Imperial Foreign Rule. Even its staunch protagonists are not able to advance any cogent or convincing argument for its retention beyond that it results in efficient preparation of the brief and presentation of the case. This efficiency is also to be found where there is a division of work as between a Senior and a Junior Advocate. As such there is no special merit attached to the Dual System. Assuming it has such a merit, it should be allowed to survive on its own merits and not be imposed under duress.

That it is helpful and suitable to commercial litigation in industrial cities of Bombay and Calcutta is one of the grounds on which continuance and retention of the Dual System is sought for. But in India, Bombay and Calcutta are not the only two Urbs Prima. Madras, Kanpur, Ahmedabad, Nagpur and some more cities are big industrial centres. In Kanpur and Nagpur the Dual System was never introduced. In Madras it is not in vogue since the year 1886. The administration of justice has not in any way deteriorated in those places in spite of absence of the Dual System.

Speaking about Bombay, it is not now a small City and Island covering a small area of about a few square miles as it existed before the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act XVII of 1945. It is now Greater Bombay, extending on one side upto Dahisar (B.S.D.) on the Western Railway and on the other upto Mulund on the Central Railway. The vast area now coming under the Ordinary Original Civil Jurisdiction of the Bombay High Court has very little to do with commercial litigation which is proportionately small compared to other litigation. Besides, the Dual System involves greater costs and delay in the prosecution of suits. Therefore if at all it is to be retained, it should be allowed to function optionally and not foisted upon compulsorily. India is a poor country. People therein are still poorer. They cannot afford the luxury of the Dual System. It is moreover unsuited in a 'Socialistic Pattern of Society', where the crying need is to make justice cheap, speedy and simple.

In summary suits, in undefended causes and in simple cases the Dual System is at any rate a needless luxury and it is hard on litigants to insist upon employing two sets of lawyers working in water-tight compartments. It is the common experience of all concerned that most of the suits are settled before they become ripe for hearing or at the date of hearing; the money, energy and time spent in preparing the case could well have been utilised for a better purpose. It cannot also be said that this system works at present as suitably as in England. There is enormous waste of talent and nepotism in common.

The Dual System further violates the principle of equality of status and opportunity in the Bar in as much as in other High Courts, the Advocates are both entitled to act as well as to plead. However, in Bombay and Calcutta High Courts they are denied the opportunity and privilege to act on their own on the Original Side. The main idea of having a common roll is that every legal practitioner should have identical right to practice in all the Courts from the highest to the lowest in the country.

The Bill classifies Advocates into senior Advocates and Advocates, the former of whom will not be required to give notices of suits, drafting pleadings, preparing briefs for conducting cases and other spade work, which will be left to the Advocates. The senior Advocates will only appear and plead. It will thus be seen that there

is no propriety in retaining the expensive Dual System and preserving a separate class of legal practitioners known as Solicitors.

The 'Dual System' as it subsists on the Orginal Side of the two High Courts of Bombay and Calcutta cannot be compared with the system at present prevalent in the Supreme Court of India, wherein the Advocate on record can, not only act, but also plead, for his client. For securing the right to act in the Supreme Court of India, what the Advocate on record is required to do is to maintain an office within a radius of 10 miles from the Court, employ a clerk and pay registration fee of Rs. 25 only and also to undergo a test. There are distinct advantages in the Supreme Court practice and procedure. An Advocate can with ease interchange his position if he so desires. There is no water-tight compartment as is found in the Dual System. If, however, any restrictions or safeguards are found necessary to secure payment of costs to the successful party to the litigation, rules to that effect may be framed, instead of imposing the top-heavy Dual System on the litigant public.

It is really surprising that for the sake of maintaining the said bloated system in the said two High Courts, the Committee have taken a retrograde step of recommending the repeal of the Supreme Court Advocates' (Practice in High Courts) Act, 1951, interpreted by the judgment of the Supreme Court in *Ashwinikumar's Case*[1], whereby all Supreme Court Advocates were permitted to both act and plead on the Criminal Side of the Bombay and Calcutta High Courts without being instructed by a Solicitor. The Committee in doing so, have retraced a step backward instead of going forward. Is it not taking away a valuable right given to a Supreme Court Advocate, thus infringing his fundamental right under the Indian Constitution?

Three members of the Committee, Messrs. S. K. Basu, S.C. Gupta and B. D. Khobergade have recorded their strong protest and dissatisfaction against the retention of the Dual System by the majority verdict of the Committee and suggested either its abolition or in the alternative its modification on the grounds most of which have been considered in the foregoing paragraphs. These members have thus voiced the general consensus of opinion of the litigant public and the legal profession, which deserves to be given due consideration by our Parliament.

Although the Committee have left the question of the "Dual System" to the High Court of Bombay and Calcutta, they have strongly disapproved and therefore have recommended abolition of what they have termed as a very undesirable practice found in certain High Courts of members of the Bar forming themselves into different groups with separate associations and exclusive rooms in High Court buildings. It would have been in fitness of things that when reporting on the Bill, they should have also recommended abolition of the Dual System, so that the unwholesome practice of separationist tendency which they have described as undesirable practice would have automatically disappeared.

It is known that this exclusiveness had its origin in the policy of racial segregation or discrimination adopted by the ruling British race, when the Dual System was first 'introduced' in the then Supreme Court at Calcutta under the aegis of the East India Company since the year 1776 on the same pattern as it then existed in Britain, for the convenience of the White people. The Dual System got firmly imbedded in the three Presidency Towns of Bombay, Madras and Calcutta, when Chartered High Courts were established in those towns in or about the year 1861. Even then the Original Sides of those High Courts remained the sole preserve of the Solicitors and Barristers of British origin. Indian Vakils and Mukhtyars were restricted in their practice on the Appellate Sides of those High Courts and in moffusil Courts only. Gradually, however, the monopoly of the Barristers and Solicitors of British origin to practise on the Original Sides of the said High Courts disintegrated and Indian Solicitors as also Indian Barristers and Advocates (O.S.) were

1. (1953) S.C.R. 1 : (1952) S.C.J. 568.

permitted to practice there. Although the racial discrimination in the Bar gradually and disappeared as time passed on, the invidious distinction and segregation between the Original Side Bar and the Appellate Side Vakils continued and they remained divided into two distinct groups as before. In this connection the Law Commission has observed in their Report of 1958, Vol. I, at page 560, as follows:—

"This division into groups seems to owe its origin to the division between Advocates and Vakils which prevailed in the Calcutta and some other Bars. The Advocates who mainly practised on the Original Side were members of the English Bar—both Englishmen and Indians, and they formed themselves into Bar Associations or Bar Library Clubs and segregated themselves from Vakils, who had their own Associations. These Associations were probably started by members of the English Bar, who, for a considerable number of years, had made the Original Sides of the High Courts their exclusive preserve. Indeed it was for a considerable time believed by the litigating public that the Barristers who formed those associations were a type of lawyers superior to the vakils who had Indian qualifications".

This odious distinction between the two Bars in the Bombay and Calcutta High Courts was again nurtured when the Dual System was given a further lease of life and reservation of seats for Barristers and Advocates (O.S.) was provided in the Indian Bar Councils' Act, 1926, in teeth of opposition from Nationalist opinion in the country. (*Vide* Legislative Assembly Debates on the Indian Bar Councils' Bill, August and September, 1926). The Dual System and differentiation between the two Bars thus go hand in hand. In Bombay the Bar, Appellate Side and Original Side, was unified since November, 1949 and the reservation of seats on the Bar Council has been rightly abolished by their Lordships of the Bombay High Court now. Still the Bombay High Court remains largely separated into two distinct groups, represented by the Advocates' Association of Western India and the Bombay Bar Association, It is high time that both these Associations are amalgamated into one Association styled as the "High Court Bar Association, Bombay", with a right to every Advocate to become its member if he so desires. In Calcutta, where the Dual System is more rigid, the Bar Library Club has still the audacity to preserve its isolation by denying its membership to the non-Barrister Indian Advocates, however qualified they may be. It is reported that a writ petition has been filed in the Supreme Court of India against such exclusiveness, the result whereof is awaited with interest.

It will not be out of place to quote here the observations of the Law Commission made in their Report of 1958, Vol. I, at page 561 :

"We are living under a Constitution which enjoins equality before the Law. The Bar, throughout, it is hoped is about to attain its ideal of unification. The profession when united can rise to even greater heights of distinction and service. It is certainly anomalous that in these circumstances the Bar should still remain split into different groups. *Bar Associations should in our view be constituted for a Court or a group of Courts only and the membership of such Bar Associations should be open to all the Advocates practising in such Court or group of Courts and all the members of the Bar practising in a Court should be able to enjoy equally the privileges and amenities of these Associations.*" (Italics ours.)

We believe it can be achieved in practice if the Dual System is completely abolished. In High Courts, where the Dual System does not exist this evil practice of exclusiveness is hardly to be found. Here again, the Joint Select Committee have merely expressed a hope that "the authorities concerned would take early steps to put an end to it". If the matter is, however, left to the discretion of the Associations concerned or the respective High Courts, it will remain hanging indefinitely. Shree S. C. Gupta, one of the Hon'ble members of the Committee, has rightly suggested that legislative intervention seems necessary for its removal.

In conclusion, we may state that the Bill as it has emerged from the fire of the Select Committee's deliberations has shown a progressive trend particularly in one

respect, *viz.*, making the Bar autonomous. But in prolonging the Dual System they have completely failed to satisfy the aspirations of the persons affected by it as also of the litigating public. The retention of the Dual System in this progressive piece of legislation is like a blot on a nicely drawn picture. Another serious lacuna in the Bill is leaving the levy of stamp duty or its abolition at the time of granting Sanad to an Advocate to the mercy of the State Governments.

It may be pointed out lastly that the opportunity to legislate for legal profession is seldom offered to the Parliament. The proposed Bill is introduced after about 35 years when the existing Bar Councils' Act of 1926 came into force and after more than 10 years of attainment of Independence. Similar opportunity may not come for several years in future. We therefore trust that Hon'ble members of the Lok Sabha will carefully examine every issue when the Bill is placed before them for consideration in the ensuing sessions of the Lok Sabha, with a view to make the All-India Bar completely unified and the administation of justice uniform throughout India.

THE HON'BLE MR. JUSTICE K. SRINIVASAN.

Mr. K. Srinivasan, I.C.S., has been appointed a permanent Judge of the High Court and was sworn in on 27th June, 1960. The Hon'ble Mr. Justice Srinivasan is no stranger to Madras where he was born and grew up. He had his early education in the Hindu High School, Triplicane, and graduated in Mathematics Honours in the year 1928 from the Presidency College, Madras. He passed the I.C.S. examination in England in 1930 and served in the Revenue Department in the Madras Presidency for a few years. Later he had his judicial training in Madurai under the late Mr. N. Chandrasekhara Iyer, who became a Judge of the Madras High Court and later on a Judge of the Supreme Court of India. First appointed as District and Sessions Judge in 1941, he has served as such in several districts of the then composite Madras Presidency. He was then Chairman of the Sales Tax Appellate Tribunal Madras, for three years after which his services were availed of for the work of the Law Commission of the Government of India. As Secretary to the Law Commission he has done admirable work and was closely associated with the wing relating to Reform of Judicial Administration in the country. After completion of his work there, he was Secretary in the Ministry of Law, New Delhi, for a year from whence he has been appointed a permanent Judge of the Madras High Court.

Mr. K. Srinivasan comes to the Bench from the time honoured Indian Civil Service with a rich and varied experience in the field of law and administration of justice, both in the judicial and executive limbs of the Government. He has many years of service as Judge of the High Court and could feel legitimately proud of the high distinction he has achieved. Unassuming and gentle he has already endeared himself to the Bar and we are only voicing the general opinion of the members of the Bar that he will prove an asset to the Bench. After swearing in his Lordship took his seat on the Bench along with Mr. Justice Ananthanarayanan when he was welcomed by the Public Prosecutor, Mr. P.S. Kailasam. His Lordship in a brief reply solicited the co-operation of the Bar in the fullest measure in the discharge of his duties.

We wish his Lordship success in his new assignment and offer our hearty and sincere felicitations to him on this occasion.

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LAW OFFICES AND CLAIMS OF THE BAR

Addressing the members of the Madras Advocates' Association a fortnight ago Sri M. C. Setalvad, Attorney General of India, said "There is a tendency for politicians to encroach upon the proper standards in the matter of judicial appointments and in the matter of selections from the Bar. The result is merit is being cold-shouldered and nepotism is slowly and steadily gaining ground". He added "There is also a tendency in some States to choose even the Advocate General not by reason of his position in the Bar but for other adventitious causes." Sri C. K. Daphtary, Solicitor General of India who was also present at the meeting expressed his concurrence with the sentiments expressed by the Attorney General.

This is not the first occasion when such a complaint has been voiced forth in public nor is the Attorney General of India the only person who has given expression to such feelings. This observation of eminent citizens and responsible law officers of the Union of India coming in the wake of a resolution* passed at an Extraordinary General Body Meeting of the Madras Advocates' Association a few days earlier regarding the appointment of the Government Pleader by the Madras Government deserves very careful consideration by the powers that be. As we look at it, this issue is not one relating to any specific case of appointment but is one of principle. The immediate provocation for this resolution by the Madras Advocates' Association may be the recent appointments of the Government Pleader and the State Prosecutor from the Judiciary and Magistracy. Sri T. M. Krishnaswamy Iyer, President of the Madras Advocates' Association, made it clear at the meeting that no reflection was meant on the equipment or the qualifications of the individual appointees. We are only concerned with the principle of appointment and the long established convention that is now being departed from. We would like to fully endorse the objectives and ideals behind the resolution of the Advocates' Association.

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*"This meeting of the Madras High Court Advocates' Association strongly protests against the appointments being made by the Government to posts of Law Officers of Government from among the members of the Judiciary, or such of them as may have resigned or retired with the appointment in view, thereby going against the long established convention that such appointments are, to be made from amongst the practising members of the Bar of the Courts concerned. .. .. .." *(Resolution passed on 24th June 1960 at an Extraordinary General Body Meeting of the Advocates' Association Madras).*

NOTE :—*The following G.O. was issued by the Government on 29th June, 1960.*

"MADRAS STATE HIGHER JUDICIAL SERVICE.

The Madras Government have directed that where a member of the Madras State Higher Judicial Service is required to retire as a condition of his appointment to an office, which does not carry any benefits by way of pension or gratuity and to which the State Government consider, that it is in the public interest that he should be appointed, he shall be granted the retirement benefits to which he would have been entitled, if he had been invalided from the service.

In its application to the Madras State Higher Judicial Service, the Government further state Rule 5 (2) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 will be superseded by the above order".

Another resolution was passed by the General Body of the Advocates' Association, Madras on 4th July, 1960.

"Resolved that the Madras High Court Advocates' Association records its emphatic disapproval and resentment against the implications contained in the Government Order superseding Rule 5 (2) of the All India Service (Death-cum-Retirement Benefits) Rules 1958, viz. (*a*) that it was passed for the benefit of single individual and not bona-fide for general future application, and (*b*) that the State Government considered that public interest, would best be served by totally ignoring the claims of the entire Bar in the State and appointing a member of the Madras State Higher Judicial Service to the post of Government Pleader, an action without any precedent or justification."

Acc. No. J 20328
Date........

An independent Judiciary and a free and fearless Bar are the last hopes left in the country for the survival of democracy. Since the dawn of Independence responsible leaders and Ministers, both at the Centre and in the States, have made no secret of their dislike of the Judiciary and the Bar. The trend of legislation has also been in the direction of minimising the value of the Judiciary. Democracy, in its ideal concept, has lost much of its significance in the course of history and recent developments in many countries, in the East and in the West, are clear pointers of the intrusion of totalitarian ideas. As Sri Setalvad pointed out in his speech, India is one of the very few countries in the world today which is labouring hard to preserve democracy. It will indeed be a mockery of democracy if insidious intrusions are made on the independence of the Judiciary. The Attorney General quite appropriately called upon the members of the legal profession to cultivate public opinion and to preserve the democratic institutions. It is the duty of the lawyers to cultivate public opinion against all anti-democratic tendencies.

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We would like to recall to the authorities that the the protest made by the Advocates' Association is not out of any personal considerations. The Madras Bar has always stood against such unconventional appointments. In 1943 when a District and Sessions Judge was appointed as an Advocate General of Sind the Bar raised its voice of protest and an eminent lawyer and statesman, the late Sri T. R. Venkatarama Sastri wrote under the title " An unconventional appointment "[1] as follows :

"The Office of Advocate General carries with it great prestige. He is the *de jure* leader of the Bar. He is the *ex-officio* President of the Bar Council in the Presidency-Towns and a member thereof elsewhere. He leads the Bar in the matter of etiquette and decorum. He has been the exponent and defender of the Bar's rights and privileges. His position is comparable to that of the Attorney General in England. Special powers are reposed in him under the Procedural Codes and the Letters Patent. The three Presidencies alone originally had each an Advocate General. The Joint Parliamentary Committee Report has stated that he should be a person of "*independence* and *standing* who would occupy substantially the same position as that of the Advocate General ....attached to the government of the three Presidencies." Active membership of the Bar with a strong forensic record seems alone to be indicated. The Advocate General should be a practising member of the Bar. To appoint a member of the permanent service to the office violates the spirit of the Government of India Act and the conventions attached to the Office."

These observations made about the office of the Advocate General may well apply with equal force to the appointment of Government Pleader. The post of Government Pleader requires an experienced lawyer of standing at the Bar and with adequate knowledge and practical experience of the ever-growing statutes and case-law in the field of substantive and procedural laws. The Government Pleader is not merely an Advocate arguing or defending a case for the government but he is their adviser. Members in the Judicial Service however eminent or capable they may be cannot be expected to have that comprehensive equipment and training which a practice at the Bar provides. We do not believe that the

1. (1943) 2 M.L.J. (*Journal*) page 45.

Madras Government feels that there are not enough qualified persons among the members of the Bar to occupy the post of the Government Pleader or State Prosecutor so as to compel them to choose the incumbents to these offices from the Judiciary and Magistracy. Such appointments have always been made from among the practising members of the Bar on all occasions in the past, and if government have any special reasons for departing from this well-established and well-meant convention they could have come forward with their reasons publicly. We trust the government will not ignore the claims of the Bar and remain deaf to the protests made by the legal profession. It does not need great imagination to realize that the independence of the judiciary will not be maintained if members in the service are led to think that by sailing with the wind they stand even a remote chance of reward of higher appointments.

To repeat the words of Chief Justice Hughes of the the Supreme Court of the United States "If democratic institutions are to survive it will not be simply by maintaining the majority rule and by swift adaptations to the needs of the moment, but by the dominance of a sense of justice which will not long survive if judicial processes do not conserve it". We are rudely reminded of these words by certain happenings in quick succession in recent times. Such happenings, not only in this State but in other States as well in the country, make us feel that there is a deliberate and calculated move on the part of government to belittle the importance of law and lawyers in society. It may be these events have happened in quick succession more by accident than by design but the cumulative effect of these makes it apparent that the government is indifferent to such happenings and is also putting its seal of approval by its silence. The Bar has always been vigilant and has lodged its protest against such happenings. But all the well meant protests of such august bodies have not been given due weight by the powers that be. The privileges of the Bar are not intended to glorify the profession or the personalities engaged in it. They are the background on which an independent Bar can ever serve the public purpose for which this institution has been founded, and encouraged in all civilized countries. We join in the protest against these recent trends and departures from established conventions and trust that the claims of the Bar will receive due and adequate consideration.

APPROACH TO PROBLEM OF LEGAL EDUCATION IN INDIA.

By

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A discussion on the subject of legal education will have inevitably to start with a clear vision of its objectives. In that the first question to consider is, what is it that legal education is trying, or what should it be trying, to ccomplish. This fundamental question should be answered before any attempt to assess the present system or any suggestion for the future reorientation of it may be made.

THE AIMS OF LEGAL EDUCATION.

Is the object of legal education to train individuals to be good lawyers? Though the main purpose of legal education may be to create good lawyers as medical education is to produce good doctors, legal education in a dynamic society has to serve a more comprehensive purpose than merely producing lawyers, as a school of technology produces technicians. An infant independent nation, where it has opted democracy as political set-up and preferred socialism as the social order, on the wake of its democratic experiment it has to reorganise all the principal agencies of social democracy in which the foremost one is education. In this legal studies are of no minor importance.

The three-man Committee which made a study of legal education in California in 1949, said, 'In the last analysis legal education has two related objectives—the training of lawyers and the improvement of the law'[1]. In India the latter purpose has been taken up by the Legislature and the Ministry of Law and as such falls outside the scope of discussion in this paper.

The next query is about the function of a University Law Faculty, and the purpose it has to serve. Is it simply to impart some elementary principles of the various branches of the existing system of laws of the country, and thus equip the students with a background knowledge, for the practice of law, or something more?. For, to train men for the legal profession is a more arduous task than the one mentioned above. To answer this, it is worth considering the observations made by some of the Committees that studied the problems of legal education in the U.S.A. The Committee on Legal Education, of the Harvard Law School, stated: 'A University Law School has two purposes: (i) to train men for the legal profession; (ii) to provide a centre where scholars may contribute to an understanding of law and government and may participate creatively in their growth and improvement[2]'. Again Dean Cecil A. Wright, of the Toronto University suggested that 'the three big objectives of a University Law School should be : (i) education in the qualities that should be found in a legal practitioner; (ii) education that will train a man not merely in the work of solving problems of individual clients but the society in which he lives; and (iii) to act as a centre of research, criticism, and contribution to the better understanding of the laws by which societies are held together[3]'. Prof. W Berton Leach writing on the aims of legal education observed that 'The men whom we are now training must be prepared to perform two tasks during the productive years of their professional lives; (i) to assume direction of all phases of the areas of personal conflict inherent in a complex society and economy. They must be advisers, negotiators, advocates, judges, arbitrators, and frequently administrators and exe-

1. Legal Education and Admission to the Bar in California.
2. Preliminary statement of the Committee on Legal Education of the Harward Law School, 1947.
3. The University Law School; 2 J.L.E. 1950; pages 409, 412.

cutives having a large amount of quasi-legislative power; (ii) to provide a very large proportion of national leadership to all level of authority'.[4]

The foregoing analysis reveals that the function of a law school is not merely to impart elementary knowledge of law, but to train men for every possible walk of life. Even if it is granted that the primary duty of a law school is to equip men for legal practice, one can dare say about the profession that no other profession or calling requires of its votaries so high a degree of versatality, insight and imagination as is demanded of the lawyers. To a lawyer, knowledge is a factor, legal knowledge must be his quest, and knowledge over a wide range of subjects, legal and non-legal, must be his hobby. In the legal profession both aptitude and skill is involved. The lawyer is a craftsman, and unless he becomes a pastmaster in his craft he cannot thrive in these days of keen competition and congestion in the field not to talk of success. Hence the purpose of legal education and the function of law schools must be to train the mind and to inculcate in the youth the skills of the craft. To become well versed in this craft the basic qualities required, are, fact consiciousness, a sense of relevance, precision and persuasiveness of speech, lingual perfection, and above all the capacity of self-discipline. The legal profession demands an attitude of mind—a mind that can think as problems arise for solution, untrammelled by preconceived notions. 'An outstanding quality of the successful lawyer is his capacity for adaptation to new tasks and his ability to educate himself to meet constantly changing demands.[5] To what extent and by what method this could be achieved in a law school is the problem which calls for solution.

In the formative period of its democracy and in the first flush of its independent spirit India has to overcome the tendency of a bureaucratic mind shirking to shed many a cherished tradition. In that the lawyer, if he is to meet the demands of a pluralistic society as ours, which is emerging from the meshes of feudal conceptions, where the nature and pattern of social development calls upon the lawyer to bridge the gaps in the process of dynamics and synthesis of society; he must have a deep sense of social responsibility and awareness of the social problems than any other vocation-seeker. For this, in him must vest a high degree of versatility, versatility in the sense, of having an attitude for newer tasks and a quality of adaptation. Hence legal education in India should aim at training, trimming and toning of prospective lawyers, to develop their abilities, aptitudes and qualities and to cultivate their faculties of thought and action so that they stand up to the needs of the time, meeting the challenges that are inherent in social dynamics.

Assessment of the Present System.

This leads us to an evaluation of the present system of legal education in India, in the context of the result it produces. The present-day legal education has had its roots in the History of British rule in India. A system of education introduced on the Indian soil more than a century and a half ago for the preservation and service of an Empire ; and, though history had its course all these long years, on the surface and structure of society, landscaped by vital changes both in its psychic and philosophic aspects ; the sphere of education remained in the same original form ; and the most needed change in that field that ought to have taken place has not taken place to cope with the changed pattern of life and relations in society. The mode of administration of educational institutions, the curriculum that was enunciated and the method of instruction that was devised a hundred years back, for an entirely different purpose continued almost unaltered and prevails even today. Althrough, except some minor and superficial changes or some additions and substitutions in the papers included in the curriculum, the old as it was, was followed up till this day without any appreciable change in the manner of teaching, even though education today is to serve quite a different purpose. This accounts for

4. Journal on Legal Education, Vol. 1 ; pages 23, 29.
5. Statement of the Committee on Legal Education of the Harward Law School, 1947; page 6.

the inadequacy. Thus the present system rendered a very wide gap between the products that are required for the present set-up and the products that have been produced today. For, an institution which have not changed itself with the changed conditions of society cannot produce the right type necessary for that society.

In England preparation for the practice of law had been, in the main, through apprenticeship training and through the Inns of Court. The education given in the Inns was primarily of a practical kind though theory was not entirely neglected. It was an education which trained students for their work at the Bar and on the Bench. The academic and practical training under the English system are strictly separated; the Universities impart the academic training while the Inns of Court and the Council of Legal Education and the Law Society deal with the training of professional lawyers[6]. In the continental countries law was taught only in the Universities; but was taught as a science and in the setting of its inter-relations with the humanities and the social sciences.[7] In the Continent too, legal profession does involve practical training. Extended apprenticeship are required after the students have finished their legal studies in the Universities. What is important to note is that the curriculum and the mode of instruction are so often revised to keep pace with the social and political changes in the national type. On the American scene legal education in its formative era had its traits of English heritage and the corresponding English institutions. But as it evolved legal education gravitated more to the Universities which factor tended materially to differentiate the system with that of England and align the American programme with that of the Continent[8]. The structure of American law is erected, true, on the foundation of the English Common Law. Yet, in America they revolutionised the legal system and law teaching in such a way to serve the best interests of the American nation. In the system of legal education which prevails in the American Law Schools, attempts have been made broadly to combine the theoretical and practical training by experimenting what is called 'the performance courses'. In the present day the American system stands far advanced contributing very much by their new scientific approach to the problem of law teaching all over the world. The case-law method itself is an innovation and contribution of American legal research.

In India what is found wanting is this lack of innovation and revolution in the technique of teaching and study. In our country the curriculum and mode of teaching remained practically unaltered for over a century and a half, that one is constrained to say that the method and subjects of teaching in the faculties are outmoded and unsuited for a society which had marched a hundred years ahead towards industrialization. Another drawback now apparent is a lack of co-ordination and co-operation between law teaching in the Universities and the legal profession in the country that the law graduates after enrolment remain idle and unattended for a long period at the Bar, unless they are enthusiastically backed by the doyens of the profession. The causes that led to this decline and downfall of prospective lawyers may be many. It can be attributed to the lowering of standards of instruction which is a necessary corollary of all round lowering of the standards of education; a shortsighted policy of neglecting English language at a transitional stage without properly developing the national language; overcrowding in the academic institutions and above all a lack of proper initiative and interest on the part of the students and teachers in general. Though varied are the reasons, the cumulative effect is that the products of these institutions of law teaching prove themselves a failure in the profession, and ultimately they have recourse to other avocations after an attempt and waste of time. To sum up the position in India today, one finds quite a vast number of law graduates in the lurch, incompetent for the profession, ill-equipped for any career, unprepared for any avocation, misfit in the social sur-

6. Law Commission Report (1959), Vol. 1; page 525.
7. Hazeltine, Legal profession and legal education, Ancient and medieval, 9 Encyl. of Soc. Sci.; page 324.
8. Legal Education in the U.S by Albert Harno; page 4.

roundings, indisciplined youths with a rebellious spirit craving for proper accommodation in the society in which they live or with a deep sense of frustration willing to turn out to be miscreants as soon as they are out of the portals of the University.

LEGAL QUALIFICATION TO THE BAR IN INDIA.

In the legal profession there are three categories of practitioners in India, the Mukthar, the Pleader, and the Advocate. The former is a fast dying species while the latter is steadily multiplying. The Pleaders, if they are graduates in law could get their certificate of practice after obtaining training for a period of six months under an Advocate of six years' standing. A Pleader can appear only in the district and subordinate Courts while an Advocate can appear in the High Courts, and any of the subordinate Courts within the territorial jurisdiction of the High Court. As Advocate a graduate in law can get himself enrolled after one year's training under a senior lawyer. There is substantial difference in the fee charged from both the categories, which in fact is the factor which perpetuates the two classes of legal practitioners. In some of the States they have a Bar Council examination which the prospective Advocate is required to pass before his enrolment and after an year's apprenticeship practice. Thus there is still certain want of uniformity in the method of enrolment of legal practitioners in the various States in India. As it prevails, while professional training is left to the Bar Councils or senior lawyers; the task of academic legal education is left to the Law Colleges affiliated to the Universities. And in law teaching also one can notice a lack of uniformity.

Law teaching in the country is generally centralized in one department or faculty as is found in the residential universities of Aligarh, Lucknow, Allahabad and Delhi, or as in the Law College under the Universities of Madras, Kerala, Punjab, Calcutta and Bombay. It is found decentralized in the case of Agra University where a department of law is organised in the various private constitutent affiliated colleges, where teaching is mostly done by part-timers from the profession. Regarding the subjects that are taught, in some of the Law Colleges Roman Law is found being taught as vigorously as was the case in the late nineteenth century while International, Law, Labour Laws, Administrative Law and such other newly developed branches of law have not yet found their due place as subjects of importance. This sort of disparity in the subjects taught and in the manner of imparting legal education and a lack of proper understanding of the needs of society which is to the catered by the law graduates coupled with a want of coordination of law teaching and legal profession and failure in the synthesis of academic approach with professional interest renders legal education in India a boon to youths of exceptional capacity and circumstance while a bane to the mediocre who comes out with a superficial and elementary knowledge of the system of the laws of the country without imbibing the spirit of the social values that are embodied in the system or knowing the significance of a system of legal education in the country.

THE PROBLEM.

The problem is, how should legal education be organised to serve the best ends of society. That is to say, what pattern of education in the field of law will meet the social needs. This raised questions regarding methods of instruction and the subjects to be taught. Another allied problem is, should law teaching be a sort of special study with less number of students as is found in totalitarian countries and western democracies, or should it be devised as a large scale liberal education. In the former case the problem is how to regulate the present day overcrowding of the classes; and in the latter case, the problem is how to standardize the legal education to improve the quality. An answer tot his problem raises many a theoretical question. Both quality and quantity are required for a developing society, particularly when the idea of a welfare State envelopes the germinating democracy.

POSSIBLE SOLUTION.

The social structure of Indian society is fast evolving, from a plural, feudalistic and backward to an industrial *cum* agricultural one. To such a society the right type

of education is that which tends to promote the cohesion and that which rehabilitates the spirited youth in transformation. In other words if the education imparted enables him to find his place in society and helps him to earn a tolerably decent living that would be the best purpose that education could possibly serve in any country at any time. A rehabilitated youth in the changed conditions of society, having a decent income to live on can never possibly turn to be a miscreant and can only be thought of as discharging the duties of a responsible citizen. Towards this end legal education must be reconstructed. In short, the purpose of legal education must be to make the educated youth a good responsible citizen best fitted to the society in which he is and to make him earn a decent living by a profession which he has opted or to which he is co-opted or to which he is inclined by the academic qualifications he has gained from the University. If this be taken as the primary aim of legal education a solution to the present day problem depends upon the reorientation of the legal studies in India. A reconstruction of the system of legal education in India naturally involves the problems of selection and admission of students to a graduate course with a view to improve quality and regulate quantity a revision of the curriculum determining the contents of the programme of studies leading to a graduate degree in law, a reconsideration of the methods of instruction and a reorganisation of the administration of law departments.

Legal education must be conceived both as a social disciplining and as a technical qualification for an avocation of a specilized type, the study of which enables one to the solution of the conflicting complexities involved in human and social problems. Law and legal problems are very much social problems and as such law as a subject of study in the University must be studied in the perspective of its inter-relations with other humanities. Further the study of the subject must emphasise the impact and importance of substantive and procedural laws and the administration of justice upon the individual and society at large.

Coming to some of the specific problems, the first question is that of admission to law courses. The study of law must be reckoned as a post-graduate course though it is graduate degree of law that is awarded. Graduation in Arts, Science or Commerce must be made the basic requirement for entrance to the law courses.[9] It must be organised as a three year course of intensive and extensive study and training. Though the views of the Chagla Commission[10] were expressed in favour of retaining Intermediate examination as the minimum standard required for embarking on legal education, which they supported on the basis of English and Canadian practice, it is open to doubt whether an Indian student brought up under Indian conditions could acquire that much of general knowledge and maturity of thought and develope that much of acquisitiveness to enable him to grasp the subject of law just at the stage when he passes his Intermediate examination. Legal studies in India must be organized for Indian conditions and for Indian students, who as a matter of fact have been very poorly fed in the necessary literature and knowledge due to the conditions of poverty that encircle the average middle class family of India. The dissenting minutes of the reports[11] advocate the case for graduation as the minimum standard and state that the 'half baked and ill equipped lawyers would have never come into existence', if graduation had been made the stage of admission.[12]

The Rajasthan Legal Education Committee is of the view that graduation must be the minimum qualification for admission to legal studies and legal education must be a three-year course.[13] This view has been supported by the Deans of the two

9. In Bombay for the three-year course in Law, Intermediate is the minimum qualification and not graduation.
10. Report of the Bombay Legal Education Committee (1949).
11. Law Commission Report, Vol. 1; page 527.
12. *Ibid*, page 94.
13. Report of Rajasthan Legal Education Committee, 1955; pages 39 and 42.

most developed Law Faculties of two outstanding Universities of India[14], and by Mr. Justice Bhagvati. The Andhra practice also goes in favour of this view as they have made graduation as the minimum qualification for admission in spite of the report of the University Commission recommending for the retention of intermediate examination as the basic requirement.[15]

To support the proposition of a three-year course the views of eminent men like Tej Bahadur Sapru, Dr. R. U. Singh and Prof. L. R. Sivasubramonium are testimonials enough[16]. Entrance to a law course must be made on the basis of an interview by an admission committee, and only students of certain matured age groups; say those who have completed seventeen years of age and below twenty five, so that their maturity of mind and outlook will render it easy for them to grasp the subject. The interview must be to judge the aptitude of the boy, his acquisitiveness and understanding capacities, his antecedents and his parental position with relation to the career he is opting. By an objective evaluation of the boy's potentialities if the interviewing Committee recommends him for admission, he must be allowed to take up his legal studies and be enrolled as a law student.

Once he is admitted to the law courses, he must be given an intensive instruction both in the theory and development of substantive and procedural laws and in the practical side of legal profession. For this, a revision of the curriculm is inevitable and the mode of instruction must also be changed. Further, to combine the professional and academic side of law a method should also be evolved.

The first year of the study may be considered a preparatory class wherein the students may gain the necessary background and the fundamental notions regarding the social aspects of the concepts of substantive law. The second and the third year must be so arranged that they receive academic instructions for about four hours in the University classes while simultaneously they get practical training in the law Courts as well as in the lawyers' chamber. To this effect every University must see that they enlist at least three or four scores of experienced legal practitioners of standing and repute from the local Bar to whom the law schools may send groups of students for practical training. In the 2nd and 3rd year of their study it must be made compulsory that the students work with their respective lawyers in their chamber and in the law Courts at least 3 to 4 hours. The students must be made to maintain a diary of their own showing the cases in which they work with their lawyers and attended the Courts. The timings should be schemed to enable them easily to execute both the academic and practical side of legal profession. For example, a system of shift may be devised so that the boy attends the lawyers' chamber from 7 A.M. to 10 A.M.; then the Court from 11 A.M. to 2 P.M. and in the evening he may attend the University classes from 4 P.M. to 7 P.M. Three hours at the lawyers' chamber, three hours at the law Courts and three hours at law school will be time well spent. It should be emphasised that unless the boy concerned makes himself eligible by production of a certificate of prompt attendance and diligent work from his respective lawyer to whom he is attached and from the Judges of the High Courts wherein he attended the proceedings, it would be deemed that he has not completed the qualifications required for graduation in law. It may be added that the scheme envisages an intensive training in the field of legal profession and legal knowledge. If such a scheme, where practical experience in the professional field goes side by side with the academic instructions, a lot of waste of time, energy and money that is involved now could be eliminated. And the one year which is increased in the extension of the law courses could be saved by such a co-ordination.

The students must be required to utilize their spare time and non-working days for library work.

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14. The views of Late Dr. R. U. Singh, Dean, Faculty of Law, Lucknow University and Prof. L. R. Sivasubramonium, Dean, Faculty of Law, Delhi University, quoted in Law Commission Report, Vol. I, page 528

15. *Ibid.*, page 528.

16. *Ibid.*, page 530.

CURRICULUM.

The first year being a preparatory year, it would be better to limit the number of papers and give intensive instructions on those subjects which will give a grounding knowledge of law and legal system. What is required is to create a habit of perseverence and inculcate an aptitude and interest for legal studies in them. Thus in the first year the following subjects may be taught :—

Paper I.—Legal History—history of the development of law and legal institutions in India and England.

Paper II.—Fundamentals of Constitutional Law with special reference to Indian Constitutional Law.

Paper III.—Modern political constitutions—a comparative study of written federal constitutions.

Paper IV.—Law and Humanities—Law in relation to other social sciences—particularly Sociology, Social Philosophy, Ethics, Economics, Commerce and Politics.

Paper V.—Jurisprudence.

In the second year the necessity of acquiring practical experience at the chamber and at the Bar has already been stated above. Thus emphasis must be laid more on the procedural laws, which today is a neglected area of the curriculum, though is the most important part of the legal profession. Hence the following subjects may consist of the second year course :—

Paper number 1.—The Law of Evidence.

Paper number 2.—Criminal Procedure, Civil Procedure.

Paper number 3.—Indian Penal Code.

Paper number 4.—Legal Remedies.

Paper number 5.—Legislative principles, methods and interpretation.

Paper number 6.—Legal Drafting, Pleadings and Limitations.

Paper number 7.—Miscellaneous Acts, such as Court-fees Act, Stamp Act, Registration Act, etc.

Familiarity with these papers in the second year will equip the students to understand the proceedings of the Courts better and, ensure them with a confidence to handle cases at the very start, without much dependence on their senior Advocates. The view of the Law Commission as expressed in its report on Legal Education, that the teaching at the Universities should not include procedural, taxation and local laws and other cognate subjects which may with advantage be left to be taught later to those who intend to take a professional career in a course where teaching will be imparted by professional men[17], does imply that the procedural laws are relevant only to men of legal profession. To this it can be stated that the very concept of a Democratic social order and the basic assumption underlying a constitutional democracy, is that the society is governed by laws and not by men. As such the foundation of society rests upon the main concepts of Rule of Law, which in its turn presumes, that every citizen, literate or illiterate is presumed to be in the know of the laws. The legal fiction that every man knows the laws by which he is governed and that ignorance of law is no excuse, however ignorant and innocent the man be, is the ruling and guiding principle of Rule of Law, which pervades a constitutional democracy. When this is the underlying presumption of the governing principles of our society, the knowledge of the procedural laws is a great asset to the individual, whatever be his occupation or profession. That only professionals who take to legal profession as career must acquaint themselves with the proceedural laws is to project an obliterated view, by which the whole idea of the

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17. Law Commissions Report, Vol. I, page 531.

aims of legal education seemingly stand blurred. The one fundamental idea with which legal education in India is to be reorganised is to serve the ends of a political representative democracy. To suggest, that when the fundamental principles of substantive law have been fully grasped, the student will more easily appreciate the procedural and practical aspects which are but the application of the general and fundamental principles,[18] is nothing but a presumption which has to be verified in the light of experience.

Any practical approach to the problem of legal education must endeavour to achieve the best and for that an imaginative approach on the lines in which the Harward Law School started its orientation by the introduction of new subjects and method of instruction after the thirties of this century, is a pointer and may well be a guide.

The revised curriculum of the Harward Law School attempted to harmonise three different principles. These are : (1) 'That every one on the Faculty should be helped and encouraged to develop the best thought that is in him and put it at the disposal of the student to the fullest possible extent. (2) That every student should receive a solid foundation of conception and method in each of the great basic legal subjects such as litigation, crime and tort, property, contract, association and Government—with opportunity as he progresses to pursue the field of his special interest in greater detail. (3) That the courses and their contents should be arranged so far as practicable, so that the student will proceed to the complex from the single and each will throw the greatest possible light upon the rest.[19]

If this be taken as guide, the third year course must be deemed a sort of specialization in which the students are prepared for the field in which they are to set in. The students who successfully get through the second year must be allowed to have their own choice of papers. A variety of groups should be offered to them. Those who have developed an interest should be permitted to make their option to the best of their inclination, which to them they feel is most profitable to make. The papers should be so grouped that any student should be able to choose allied subjects by selecting two groups, so that they would have to sit for an examination of eight papers in all. It is not necessary to give the students an overcrowded syllabus covering all the branches of substantive laws. The reason is, it is seldom found that a lawyer who takes to the practice of constitutional or taxation cases deals in other cases where he feels not very sure. Nor is it to be seen that a practitioner in the Civil Courts taking to the Criminal side, except as an exception. Though it may be admitted that to keep a clear separation of the subjects and to envisage an exclusiveness is to fumble to fallacy, yet it could be feasibly and scientifically categorised to practical advantage. Since the aim of legal education in a University is to develop and to cultivate the faculties of individual capacities to study, understand and interpret in the social context the contents of law and to train them to seek and to find wherein is the law and its principles; to offer a sort of specialisation in the third year will be more useful than to shroud the students' mind with all and sundry. And if legal education in the University has served the purpose of developing the students innate faculties, then he who has acquired the habit of learning and acquisitiveness can easily find the way in any other branch of the field of law too, though he might not have studied those subjects while he was in the Law School. Thus it will not be difficult for those who had studied only property laws when they were students, to take to the field of criminal law or constitutional law when they are in the profession, as they had already become well versed in the art of searching, understanding and interpreting the law.

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18. Report of the Law Commission, Vol. I, page 532.

19. Report of the Committee on Curriculam of the Harward Law School, 1936, page 11 and 51 ; H.L.R., page 973.

To set as example, the following groupings could be adopted as the subjects of choice for the third year :—

Group I ..		.. *Personal Laws.*
	Paper 1	.. Hindu Law
	Paper 2	.. Mohammadan Law
	Paper 3	.. Matrimonial Laws
	Paper 4	.. Conflict of Laws
Group II ..		.. *Property Laws.*
	Paper 1	.. Law of Transfer of Property
	Paper 2	.. Equity and Trusts
	Paper 3	.. Easements, Specific Relief Act
	Paper 4	.. Land Tenures (of the State concerned)
Group III ..		.. *Constitutional Law Group.*
	Paper 1	.. Indian Constitutional Law
	Paper 2	.. American Constitutional Law
	Paper 3	.. British Constitutional Law
	Paper 4	.. General Principles (of Federal Constitutional Law.
Group IV		*Administrative Law Group*
	Paper 1	.. Administrative Law in U.S.A. and U.K.
	Paper 2	.. French and Continental Administrative Law
	Paper 3	.. Indian Administrative Law and Adjudicatory Tribunals
	Paper 4	.. Local Government and Municipal Laws
Group V		*International Law Group*
	Paper 1	.. Public International Law
	Paper 2	.. International Relations
	Paper 3	.. International Organization
	Paper 4.	Law of citizenship and nationality or private International Law
Group VI ..		*Crimes and Torts*
	Paper 1.	General Principles of Crimes and Torts
	Paper 2.	.. Specific Crimes and Specific Torts
	Paper 3.	.. Penology and Punishment
	Paper 4.	.. Law of Contempt of Court
	Paper 5.	.. Criminology and Indian Penal Code
	Paper 6.	.. Law of damages
Group VII ..		*Commercial Laws*
	Paper 1.	.. General Principles of Company Law and Indian Companies Act
	Paper 2.	.. Private Corporations, Partnership and Agency
	Paper 3.	.. Law of Contracts and Sale of goods.
	Paper 4	.. Law of Negotiable instruments, Insurance, Copyrights and Trade Marks
	Paper 5	.. Law relating to Public Enterprises (including those of the respective State)
	Paper 6	.. Law of Damages

Group VIII		*Labour Laws and Administration*
	Paper 1	.. Factory legislation (Factory Act)
	Paper 2	.. Law relating to Wages (Minimum Wages Act and Payment of Wages Act).
	Paper 3	.. Law relating to Industrial relations (Industrial Disputes Act, etc.)
	Paper 4	.. Law relating to compensation and damages under the labour legislation (Workmen's Compensation Act, etc.)
	Paper 5	.. Law relating to special Tribunals and Arbitration proceedings (Indian Arbitration Act)
	Paper 6	.. Trade Unionism and Trade Union Laws. (Indian Trade Union Act, etc.)
Group IX ..		*Taxation*
	Paper 1	.. Distribution of Taxating Power of the Union and the State under the Constitution
	Paper 2	.. Income-tax and Estate Duty, Customs and Excise regulation, etc. (import and export)
	Paper 3	.. Sales-tax and other commercial taxes
	Paper 4	.. Rent Control and Eviction Act
	Paper 5	.. Local Government and Municipal taxes
	Paper 6	.. Miscellaneous Acts (Shopkeepers' Act).

Constant addition to these subjects necessitated by fresh legislation and revision of the syllabus at least once in five years, to make it all-inclusive if not exhaustive, must be made.

Any convenient combination of the papers with additions or substitutions may be adopted to suit the legislation of the respective States keeping in view that every group contains at least 4 papers, in which the students are required to take up examination, so that no student will have to give more than eight or nine papers and not less than seven papers by opting two groups of his choice.

This in short could be the curriculum for a three years course of law graduation.

Such an arrangement of the curriculum will have a double advantage. A student of the third year will have a liking for the subject which he chooses for his specialisation due to reasons specific to himself; and secondly, he would be well informed on the subjects of his study on completion and be in a position to feel his way in the field of profession, as he is already aware and proficient in the branch of law which he has opted to practice.

The lectures should be so organised and the topics of respective teachers on their subjects must be in advance announced, so as to enable the students of other groups also to attend if they like to make up their deficiency in that particular topic. It could be arranged that the teacher of a particular subject be advised to address on special topics, in which they are more proficient, to students of a different set of subjects to make them able to realise the inter-relationship of the subjects to one another.

After graduation, bright students may be admitted to a post-graduate course leading to a Masters' Degree in Law, spread over a period of two years of intensive and extensive academic instruction and research on the branches of the subjects in which they have qualified, or any other allied subjects of their choice; admission to the post-graduate course depending purely upon academic merit and aptitude, decided on the recommendation of their respective tutorial teachers and the admission committee.

By adopting such a scheme within a period of three years a student gains the necessary working knowledge of the practical side of legal profession through experience with the senior lawyer and the Courts and a fair knowledge of the substantive laws too, to enable him to thrive in the profession from the very start. Again, as the student is already for two years in the practical field where he has acquainted himself with a few litigants, he will be in a position to pick up his clientele with his own effort. If he cares to be diligent and honest, he will be just on his way from the beginning settled in life with an honourable earning to live with from the very out-set of his career in the legal profession.

METHOD OF INSTRUCTION.

To deal with the method of instruction at the graduate level, emphasis must be made on a harmonious blending of general lectures and tutorial instructions. The general lectures must deal with the main topics on every subject, while in the tutorial classes discussion may be upon more intricate details and complicated issues relating to the different topics of each paper. Tutorial groups must not be of more than eight boys in a batch drawing the attention of a particular teacher so that they are able to have more intimate and personal knowledge and appreciation of each other which is highly desirable and essential for a healthy academic atmosphere.

OVERCROWDING OF THE LAW CLASSES.

The next problem to be considered is the problem of overcrowding in the University law classes. To that the suggestion is regulation of admission as one of the ways. By prescribing age limit, necessary academic qualifications and interview into the candidate's antecedents and circumstances, which has been already mentioned in connection with the problem of admission to the law classes, a good number of those non-deserving and non-serious types, which are today found to be undesirable elements in the academic atmosphere of a University, could possibly be eliminated. Added to that admission to the LL.B. first year must be strictly restricted to such a number only, to make the number present and attending in each section to comprise a maximum 75 and minimum 50. Deducting a certain percentage of failures in the first year, the second year will comprise of still lesser number of students in each section. And in the Final year, the choice in the course of study offered are so varied that the students in their usual course get scattered into the various groups of their interest or inclination by which the number in each class remains steadily regulated and limited. It might be posssible that some of the most lucrative branches of law in the Final year may attract more students. But they will remain interested and serious students of the subject. Moreover, the Final year boys will be earnest due to various factors such as their practical training in the field of law during their second and third years, interest in their own subjects of choice, their consciousness that they are preparing for a career which is to start immediately, and that they are on the verge of completion of their academic life.

An added advantage to be noticed in this scheme of academic instruction-*cum*-practical training is, that the students remain engaged, systematically from morning to evening which helps them to be disciplined and trained for hard regulated intellectual labour. The whole scheme, of course, envisages initiative and active co-operation of the three estates of public life of nation, *viz.*, the Government, the Bench and the Bar and the University, for a successful implementation of it.

PROPOSALS.

The whole question of reorganisation of legal education in India must be viewed from the point of view of:

(*a*) Closer co-ordination of work done by the Universities with that of legal profession.

(*b*) Furthering advanced research in Legal studies.

(*c*) Standardizing the subjects and methods of teaching in the University law classes all over the country.

To achieve this the following proposals may be considered by those who are in charge of the affairs.

(i) An all-India permanent Advisory Committee on Legal Education consisting of 11 members may be constituted under statutory authority. The personnel of it must represent the academic side, the professional side and the Government. Hence two members may be appointed by the Universities to this body representing the most developed law schools in the country. Three members may be nominated to it by the Leading Bars including Supreme Court Bar. Two members may be nominated by the Chief Justice from amongst the judges of the Spreme Court and the High Courts. One member may be appointed by the Government as a Government nominee while one member may be appointed by the University Grants Commission. Two members must be nominated by the Law Teachers Association representing the law teachers of the country. No such member is to represent more than that body which nominates him.

The functions of the Committee should include :—

(1) Advice on broad principles of policy to be adopted in the teaching of law in the various law schools ;

(2) Co-ordination of teaching particular subjects in different schools ;

(3) The general scope of teaching and examining by the different law schools;

(4) The specification of standard of general education desirable for candidates for entrance to both branches of legal profession ;

(5) Consultation with any university, Government department or official committee, regarding matters of interest pertaining to Legal Education ;

It will be the duty of this Committee to assess and evaluate the progress and merits of the sytem of legal education in the country every five years and suggest suitable modifications in the subjects and methods of instructions and to evolve new patterns of study and research in the legal field, so that legal education of the country will serve the best desired ends in the scoial context of a dynamic society.

(ii) A Committee of advanced research on legal subjects is to be set up consisting of professors and lecturers in the most developed law departments of the various Universities, to which specific subject of current importance and development is to be referred by the Government for research and study, for which special financial grants ought to be made to the respective Law School.

(iii) Establishment of Law Libraries in all the Law Schools with liberal grants to expand and make available legal materials to conduct research must also be expedited[20].

In the words of J. Cordozo "the function of a Law School is to look at law imaginatively and discern behind the sordid quarrels of one litigant and another, a something that transcends the selfish rivalries of the hour, behind the petty and the ephemeral and the ignoble, the workings of an eternal process of which these are but the shadows."

If this is the function of a law school, a scheme of the sort as detailed above, must be planned for reorientation of law teaching, combining the apects of diffusion and acquisition of knowledge with that of experience both practical and research.

Legal education must be a national effort and not merely the task of the Universities alone. Unless national consciousness tackles it as a national problem, wherein the interest and energies of the Government, the Universities and the professionals play to solve it, on a national scale, no satisfactory solution satisfying the needs of a progressive society could ever be achieved.

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20. These proposals are adopted from the Report of Lord Atkins Committee appointed by Lord Sankey in 1932 to consider the question of reorganisation of English Education ; 51 L.Q.R. page 173 and 50 L.Q.R. page 472.

Sankarlal *v*. Collector of Central Excise and another,

(1960) 1 M.L.J. 367 : (1960) M.L.J. (Crl.) 290.

A NOTE

By

P. NAGARAJA RAO, B.SC., B.L., *Advocate, Nandyal.*

The Collector of Central Excise, Madras, recovered from the petitioner 500 packets of 7 O' Clock blades each packet containing 100 blades, having had reason to believe that the petitioner had evaded payment of customs duty. He was charged with the violation of section 19 of the Sea Customs Act read with section 3, sub-section (2) of the Imports and Exports Control Act, 1947. Thereupon, the Collector of Customs issued summonses to the petitioner calling upon him to appear before him and produce all the documentary evidence for the receipt of goods, *viz.*, the 500 packets of 7O' Clock blades.

Petitioner filed a writ petition in the High Court challenging the direction issued by the Collector and praying to quash the proceedings before him contending that the summonses issued to him by the Customs Collector requiring him to produce all the documentary evidence amounted to testimonial compulsion, which was violative of Article 20 (3) of the Constitution of India.

It was contended *inter alia* by the petitioner that officers of the Customs Department have been specifically empowered by the Sea Customs Act to impose various penalties including fines and confiscation of goods and that the acts or omissions in respect of which they have been so empowered to impose penalties or fines, constituted 'offences' within the meaning of Article 20 (3) of the Constitution. The Customs Collector, hence, is not entitled in law to call upon the petitioner to provide evidence before the prosecuting authority, which might tend to incriminate the petitioner.

On the other hand, the Government argued that the word 'offence' and the word 'accused' occurring in Article 20 (3) of the Constitution are employed only in relation to proceedings instituted before a Criminal Court, that the proceedings before the Customs Collector are not criminal proceedings though they are empowered to confiscate goods and hence there was no infraction of the petitioner's fundamental right of privilege against self-incrimination. The Customs Collector was therefore fully empowered to direct the petitioner to produce the necessary documentary evidence.

The High Court held, after considering all the authorities on the point that when proceedings are instituted by the Customs authorities, which may terminate in the confiscation of goods or the imposition of penalties without reference to any Criminal Court, the Customs authorities are not acting as Courts of law and the proceedings before them are not judicial proceedings. If the petitioner was asked questions which might tend to incriminate him, it would be open to him to claim preotction provided by Article 20 (3) of the Constitution. If the claim was over-ruled, and he was compelled to answer questions, then the answers given by the petitioner would not be admissible in evidence, should the Customs authorities propose to prosecute the petitioner in a Criminal Court at a later stage. The High Court also suggested the desirability of the Customs Department letting it known at the earliest stage to the delinquent who stands charged before them, whether the proceedings before them would terminate there itself or whether they would continue even in a Criminal Court. The findings of the High Court were, (1) that the protection afforded by Article 20 (3) of the Constitution, *viz.*, the privilege against self-incrimination is available only in so far as proceedings before a Criminal Court are

concerned and (2) that any departmental authority who is empowered by virtue of any provision of law to impose penalties is not a judicial Tribunal. The whole argument before the High Court centered round the question whether the protection guaranteed in Article 20 (3) of the Constitution was restrictive in its operation only so far as proceedings before a Criminal Court are concerned or whether it also extended to any other case of prosecution before any authority, who by virtue of any provision of law is authorised to impose penalties or sentence to imprisonment. Mr. Justice Balakrishna Iyer, who delivered the judgment of the High Court was inclined to accept the argument of the State that the protection against self-incrimination embodied in Article 20 (3) of the Constitution extended only to cases before the Criminal Courts. Even though his Lordship was inclined to accept the argument of the petitioner to a considerable extent, *viz.*, that the petitioner's fundamental right of protection against self-incrimination was violated when he was called upon to produce documentary evidence by the Customs Collector, still his Lordship qualified the privilege claimed by the petitioner by observing that the protection guaranteed by the Constitution would really come into operation only at a later stage when the Customs Authorities proposed to prosecute the petitioner in a Criminal Court.

Article 20 (3) of the Constitution provides, " No person accused of any offence, shall be compelled to be a witness against himself."

It is respectfully submitted that there is nothing in Article 20 (3) of the Constitution which warrants such a narrow interpretation as was pressed by the learned Advocate-General during the course of arguments that the protection extended only to cases before Criminal Courts.

" Offence " is defined in Criminal Procedure Code as any act or omission made punishable by any law for the time being in force. Article 20 (3) provides the guarantee against testimonial compulsion. This protection is indeed founded upon the fundamental principle of Criminal Jurisprudence that the person who is charged with the violation of any law or rule, which is made punishable, is presumed to be innocent until his guilt is established beyond reasonable doubt and it is for the prosecution to establish the case against the alleged offender and not for the latter to prove his innocence. The purport of Article 20 (3) understood in its true spirit is merely the reiteration of the fundamental rule of Criminal Jurisprudence referred to above, which has been invested with the sanctity of a Constitutional guarantee. The article employs the expression "accused of any offence". Does it mean and imply that he is only a person who is faced with a charge in a Criminal Court? With respect, it is submitted, that it is not. Indeed, as the learned Judge observed, the word 'accused' has not been defined in the Constitution. But this difficulty need not detain us long, since the expression used is 'accused of any offence'. It seems to me a careful examination of this expression leads to the inference that the guarantee provided by this Article is not restricted only to a person who has to stand in a dock in a Criminal Court, but is a general protection for all the people who stand charged before any authority for violation of any provision of law or rule. The Chambers Twentieth Century Dictionary defines 'accuse' as bringing a charge against, and the 'accused' as a person or persons 'accused of.' The word 'of' is defined as 'from among' 'out from' 'belonging to', etc. It is therefore reasonable to presume that the expression 'accused of any offence' is used in the sense as any person against whom there is a charge concerning any offence or against whom there is a formal accusation. It cannot be understood in the limited sense, *viz.*, that he is one who is to figure as accused in a Criminal Court and not as any other person against whom there is a charge with regard to any offence before any other authority. The Constitution envisages him as the person who is called upon to answer a charge by any person who is authorised to hear the same and punish him and it has not limited its protection only to those who appear before a Magistrate in Criminal Courts.

It is well to remember that in the instant case, the Collector of Customs issued a warning to the petitioner that giving false evidence in proceedings before him would be an offence punishable under section 193, Indian Penal Code.

The Criminal Procedure Code defines a judicial proceeding thus—"Judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath." Now when the Customs Collector administered the warning to the petitioner against giving false evidence when he is authorized to take evidence on oath, can it be said that the proceedings before the Customs Collector are not judicial proceedings. Undoubtedly, they are judicial proceedings, by virtue of the definition in the Criminal Procedure Code notwithstanding the fact that he has not the trappings of a Magistrate. The Supreme Court of India has observed in *M. P. Sharma* v. *Satish Chandra*[1], that the phrase used in Article 20 is 'is to be a witness' and not to 'appear as a witness'. It follows that the protection afforded to an accused in so far as it related to the phrase 'to be a witness' is not merely in respect of the testimonial compulsion, but may well extend to compelled testimony previously obtained from him. It is available therefore to a person *against whom a formal accusation relating to the commission of an offence has been levelled* which in the normal course may result in prosecution.

It is therefore respectfully submitted that the High Court has erred in holding that the proceedings before the Customs Collector are not judicial proceedings. It is also submitted that the protection guaranteed by Article 20 (3) is available not merely to a person who is arraigned in a Criminal Court but to any other person against whom there is a formal accusation in respect of any offence before any other authority who is empowered to prosecute the person concerned. It is also submitted that the proceedings before the Customs authorities are certainly judicial proceedings and the protection against self-incrimination would also extend to cases before them.

REJECTION BY WORLD COURT OF PORTUGAL'S REQUEST—DADRA AND NAGAR HAVELI'S *DE FACTO* FREEDOM.

By

PROF. K. R. R. SASTRY.

Truth lags behind while lies get a march ahead. One is reminded of this adage when one reads misreadings of the judgment of the International Court of Justice *vis-a-vis* Portugal's request for access to *Dadra* and *Nagar Haveli*. It is time that the Government of India give due publicity to the unambiguous rejection of the Portuguese case by the World Court.

FACTS OF THE CASE.

Portugal received a *Jagir* or *Saranjam* of *Dadra* and *Nagar Haveli* from the Marathas under the treaty of 1779 and the *Sanads* of 1783 and 1785. The grant of a *Jagir* or *Saranjam* always pre-supposed the overlordship of the giver. It was thus always less than that of Sovereignty.

Later when the British arrived on the scene they found the Portuguese in *de facto* possession of *Dadra* and *Nagar Haveli*. As the World Court has put it "the villages......acquired the *character* of Portuguese enclaves within Indian territory".

On 21st and 22nd July, 1954, Portuguese authority in that enclave was overthrown by the people therein. As a result of tension in the surrounding Indian territory, all passage was suspended by India.

The population of the enclaves set up before December, 1954, for itself a "free Government in the territory of the enclaves."

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1. (1954) 1 M.L.J. 680 : (1954) S.C.J. 428 : (1954) S.C.R. 1077.

APPLICATION OF PORTUGAL.

In December, 1955, Portugal was admitted to membership of the United Nations and on 22nd December, 1955, Portugal's application was submitted to the Court of International Justice.

PORTUGAL'S CASE REJECTED.

India has won on the merits—The majority of the Court has rejected Portugal's request and held that

"Portugal did not have in 1954 a right of passage in respect of armed forces, armed police, and arms and ammunition."

Regarding her request under the second head the World Court has held that India has always acted within her rights and has not violated any of her obligations. Thus India was well within her rights as sovereign of the surrounding territory, when she denied passage to Portugal to the enclaves.

In re PRIVATE PERSONS AND CIVIL OFFICIALS.

The Court has held that "Portugal had in 1954 a right of passage....subject to the regulation and control of India in respect of private persons, Civil Officials and goods in general."

Under the third head Portugal prayed for an injunction that "India should put an immediate end to this *de facto* situation by allowing Portugal to exercise the .... right of passage" (page 4 of Judgment). The Court has not given any satisfaction to this claim.

As the Argentine Judge, Justice Armand Ugon has stated (*vide* page 83 of the Judgment)

"These new facts (changes of July, 1954) must lead to holding either that the right which has been recognized must be suspended or that it has become extinguished. In either case, it must be concluded that the passage claimed must be regarded as incapable of exercise (in) the present situation."

RESULTS IN SHORT.

Since Portugal's claim whether in respect of passage or of Sovereignty stands rejected, *Dadra* and *Nagar Haveli* are *de facto* freed of Portuguese Colonialism.

As ethnically and culturally these villages of *Dadra* and *Nagar Haveli* are attached to India, the judgment of the Court of International Justice has made the process of these villages joining the Indian Union *easy*, *natural* and *legal*.

MR. N. RAJAGOPALA AYYANGAR.

The appointment of Mr. N. Rajagopala Ayyangar, retired Judge of the Madras High Court, as a Judge of the Supreme Court of India will be welcomed by one and all. In fact, his elevation to the Bench of the Supreme Court was expected much earlier, even when he was presiding as a Judge of the Madras High Court or almost immediately before his retirement from the Bench towards the end of 1959.

Mr. Justice Rajagopala Ayyangar goes to the Supreme Court with a ripe experience and a great tradition. An eminent lawyer and jurist, he proved an able Judge as well, during his work as such, in the Madras High Court, for over six years. His training under the great lawyers and statesmen like the late Mr. T. R. Venkatarama Sastri and Sir Alladi Krishnaswami Iyer is an invaluable asset. His Commentaries on the Government of India Act, 1935, and his handling of many important cases in the High Court at Madras and before the former Federal Court and the Supreme Court of India have earned him a reputation as an expert constitutional lawyer. As a Judge of the Madras High Court, both on its Original and Appellate Sides, he has been dealing with company law, taxation statutes and the interpretation of the Constitution. His work in drafting a comprehensive Bill on the Patents Law received high praise. The Bench of the Supreme Court, in the past decade, has been adorned by several eminent Judges from the Madras High Court. Sharp, active and energetic as ever before, Mr. Justice Rajagopala Ayyangar belongs to that illustrious group and we are sure the Supreme Court of India will be richer by his appointment.

We offer our warm and sincere felicitations to his Lordship on his appointment and wish him good health and all success.

BOOK REVIEWS.

PARLIAMENTARY SUPERVISION OF DELEGATED LEGISLATION, by John E. Kersel, Assistant Professor of Politics, McMaster University, Hamilton, Canada, with a Foreword by Sir Cecil Carr, K.C.B., Q.C., LL.D. Published by Messrs. Stevens & Sons, London : India Agent : N. M. Tripathi (Private) Ltd., Bombay. Price Rs. 20.

Delegated legislation has come into vogue in an increasing measure in recent times as the functions of the Governments have become more complex and varied. Governments under modern Constitutions are not exercising mere police functions. They are doing the work of great social reformers and social service organisations. Such functions of the Government lead to a large volume of varied legislation the like of which might not have been even thought of a century ago. Most of these legislations are of a specialised type intended to achieve certain social objectives or technical perfection. They involve more of administrative technique rather than legal issues. It is not possible to provide in these statutes all the details of the machinery or the intricacies of its administration. The administrative and executive part of such legislations are always entrusted to rule-making authorities who are best suited to the work by virtue of their special qualifications and experience in handling the day-to-day affairs of the Government. It is one thing to enact a law laying down the principles. But its administration may involve different considerations. Parliament or Legislatures, mostly composed of laymen, are neither equipped to make detailed provisions as to these matters nor is it practicable in the short duration of their sessions. Hence it has become necessary to delegate the powers to the Executive branch for effective implementation of laws by means of Rules and Regulations which have the force of law and are familiarly known as subordinate legislations. By this delegation Legislatures are not supposed to abdicate their powers in favour of the Executive. The delegation itself is circumscribed by the statutes which authorise such delegation. Excessive delegation or unauthorised delegation has always been struck down by Courts. Hence the need for proper supervision over the need and extent of the delegation. The exercise of the delegated power is also to be watched with great care as there is always a possibility of errors or abuse of such powers. Parliament as the ultimate law-making body and protector of the citizens' rights has a duty to see that under the cloak of delegated powers the civil servants do not become despots. We are familiar with the idea of judicial scrutiny of administrative actions. This book deals with the other aspect *viz.*, Parliamentary supervision of delegated legislation.

The Author of the work deserves to be complimented on his excellent and timely monogram on this important and interesting subject. Students of law, constitutional lawyers, legislators and parliamentarians will find excellent reading material in this book. The subject is treated with special reference to United Kingdom, Australia, New Zealand and Canada. But the work could be read with profit in any other country whose pattern of Government is similar to those.

The printing and get-up of the book is excellent.

LATE SRI V. L. ETHIRAJ.

It is with deep regret we record the passing away of Sri V. L. Ethiraj, a prominent member of the Madras Bar, a former Public Prosecutor and a great philanthropist. He was seventy and passed away peacefully on the morning of 18th August, 1960, at his residence in Madras due to coronary thrombosis. His sudden end, coming as it did, within a week of his return from Britain after undergoing treatment, was quite unexpected and it took the citizens of Madras some time to realise the news of his death which spread throughout the city within a few hours.

Born in 1890 in a well-known and affluent family of Vellore, North Arcot, he graduated from the Presidency College, Madras. He was called to the Bar in 1913 from the Lincoln's Inn and was enrolled as an Advocate of the Madras High Court the same year.

It is indeed needless to chronicle the career of Sri Ethiraj at the Bar. During his early days he was working with Mr. Chamier and later with Mr. Osborne, who was a leading lawyer on the Criminal Side in those days and who later became the Public Prosecutor of Madras. He also worked in the Chambers of Dr. Swaminathan, another leader of the Bar in those days. Early in his career, Sri Ethiraj had chosen the Criminal Side as his venue of work and very soon he gained a high reputation and built up a lucrative practice. For several decades he was the unchallenged leader of the Bar on the Criminal Side and his success was phenomenal. His advocacy had its own inimitable distinctive style. Cheerful and persuasive, with a mastery of the facts and clever marshalling of the evidence, with a keen and watchful eye on the leanings of the Judge, Sri Ethiraj got winning verdicts before the Judge and the Jury. That he was original in his approach to cases is to say the least. The very originality of approach made him digest the features of a case so thoroughly that his arguments had a telling effect. He was equally at ease and successful both as a Prosecutor and as a Defense Counsel.

Sri Ethiraj was the Public Prosecutor of Madras from 1937 to 1950 and has conducted several sensational cases during his tenure of office. He has gained the great reputation of being one of the fairest of Public Prosecutors. Never anxious to get a conviction by methods, questionable even in the slightest degree, he played the intellectual battle in the best interests of the State and society and the high traditions of the profession. It is high compliment to his talents and professional ethics that quite a number of his juniors became Judges of the High Court in Madras and Andhra and the present Public Prosecutor, Sri P. S. Kailasam, was also his junior. The interest he took in the progress and success of his juniors was almost parental.

Looking back on the years it could be said without any hesitation that Sri Ethiraj had many friends and no enemies. Tall and graceful, with sharp features and a winning smile on his face, spotlessly clean and meticulous in his dress, a distinctive air of care-free life, everything about Sri Ethiraj had a style of its own which was admired by everybody. Age had not withered him and he was his masterly self,

till the end both in and outside the profession. A gentlemen from top to toe, he envied nobody and his pleasant manners were liked by everyone. A keen sportsman, a connoisseur in automobiles one could have seen his distinctive and easy style even in driving or parking a car. Sri Ethiraj was a keen horticulturist and his home garden has won several awards in the competitions held by the Madras Horticultural Society.

Sri Ethiraj has earned a high place among the philanthropists of the country and his name would be remembered by posterity for his princely donation to the Ethiraj College for Women in Madras. In recent years the profession of law and the progress of this institution were his all-absorbing interests.

In the first Court Hall, packed to its full by members of the Bar and Law Officers, before their Lordships, the Chief Justice, Sri Justice Somasundaram and Sri Justice Veeraswami, Sri P. S. Kailasam, Public Prosecutor and Acting Advocate-General of Madras, made a touching reference to the passing away of Sri V. L. Ethiraj and said that the profession has lost one of its giants and it will be difficult to replace him. The Chief Justice, Sri P. V. Rajamannar, associating himself and the Bench with the sentiments expressed by the Acting Advocate-General said that in the history of the Madras High Court, Sri Ethiraj would be remembered as the greatest Public Prosecutor that the Court has seen.

Reference to the death of Sri V. L. Ethiraj was also made before the Principal City Civil and Sessions Judge and before the Presidency Magistrates. The Bar Association and the Madras High Court Advocates' Association met and paid tributes to the eminent lawyer and citizen of Madras and passed resolutions condoling his death. The staff and the students of the Ethiraj College for Women met and passed a resolution expressing deep sorrow at the death of the founder-benefactor of the institution.

We offer our sincere condolences to the bereaved family and it may be a source of consolation to them that their loss is shared by many outside the family also.

May his soul rest in peace.

THE HON'BLE MR. JUSTICE P. V. BALAKRISHNA AYYAR, I.C.S.

There can be no greater compliment to the efficiency of disposal of a case and no greater tribute to the fair-mindedness of the Judge who disposed of the case than when the counsel who had lost his case comes out with the satisfaction of having lost it. Every coin has two sides and so has every case. It is with our judgments as it is with our watches, that none go alike, yet each swears by his own. In the ultimate analysis the effective administration of justice is not judged by the success of one side or the other to the cause but by the establishment of the rule of law on firm ground. Thanks to Providence we have still in our Judiciary eminent Judges who never swerve from this great task. Patient hearing, sympathetic understanding, tolerence of other view-points, freedom from bias or prejudice against personalities or the nature of the cause and an impartial judgment without a disposition to satire, these are the attributes of a great Judge. And it is on such great Judges depends the future of our democratic institutions. In the words of Lord Erskine, the famous English Advocate who later became Lord Chancellor of England, "whatever we have lost of our control in Parliament, we have yet a sheet-anchor remaining to hold the vessel of the State amidst contending storms—we have still, thank God, a sound administration of justice secured to us in the independence of enlightened Judges and the integrity of the Bar—ready at all times and upon every possible occasion, whatever may be the consequences to themselves, to stand forward in defence of the meanest man, when brought for judgment before the laws of the country."

The Hon'ble Mr. Justice P. V. Balakrishna Ayyar, I.C.S., who is demitting his office as a Judge of the Madras High Court towards the close of this month, on attaining sixty, is one of those great Judges who has infused in our minds the hope that everything is not yet lost. Mr. T. M. Krishnaswami Ayyar, doyen of the Madras Bar who has seen over fifty years of life at the Bar, echoed the feelings of the members of the Bar and the public when he said that Mr. Justice Balakrishna Ayyar was one of the greatest Judges that ever sat on the Bench of any High Court in any country. Some of the recent pronouncements of his Lordship in what are familiarly known as the 'Text-book case' and the 'Government Pleader's case' have evoked much interest that has enhanced the reputation of the Madras High Court.

Mr. Justice Balakrishna Ayyar belongs to the Indian Civil Service, reputed for its efficiency and fairness in administration. Born in 1900 in an aristocratic family of Malabar, he had a brilliant academic career, standing first in almost every examination. As a graduate of the St. Joseph's College, Tiruchirapalli, he won the Norton Prize and as first in the F.L. Examination he annexed the Moorhead Prize. He came out first in the competitive examination for the Indian Civil Service in 1923. Entering service in 1926 as Assistant Collector he was in the Revenue Department till 1933. After judicial training he was posted as District and Sessions Judge in 1936 in which capacity he served in several Districts of the then composite State of Madras till 1946. From 1947 to 1948 he was Additional Secretary and Secretary to the Government of Madras in the Legal Department, when he was appointed as Judge of the Madras High Court in January, 1949.

During his tenure of office as a Judge of the High Court for nearly eleven years his Lordship has presided over all the branches of work, on its Original Side, Criminal Sessions, Appellate Side, Civil and Criminal. A sincere and visible effort to grapple with the intricacies of a case, a transparent frankness in clearing his doubts, tremendous patience in listening to any amount of argument and painstaking analysis of facts, however complicated or wherever they lay to discover the truth, effective silencing of extreme arguments and a uniform policy of approaching every case from first principles, without any leanings on either side, these were the characteristics that marked his Lordship's method in disposing of cases before him. When we think of the learned Judge's work in the High Court we are reminded of the words of Justice Story in the famous Dartmouth College case, where he said "I have pondered over the case before us with anxious deliberation. I entertain great respect for the legislature whose Acts are in question. . . . . no less respect for the enlightened tribunal whose decision we are called upon to review. I have endeavoured to keep my steps *super antiquas vias* of the law, under guidance of authority and principle. It is not for Judges to listen to the voice of persuasive eloquence or popular appeal. We have nothing to do but to pronounce the law as we find it; and having done this, our justification must be left to the imperial judgment of our country." Mr. Justice Balakrishna Ayyar did this and more. He was a real corrective on the administration and his sense of fair-play, equity and ideal justice made him almost rebel against unfair ends or means. He insisted on getting the facts clear and true from the parties or counsel and any prevarication will be scorned at by him. In deciding the issues in a case between party and party, when technicalities of law or procedure bound him to decide in a way which was not in the larger interests of truth and justice, his Lordship made no secret of it, in open Court or in his judgments. His clinching comments, terse logic and close reasoning, effective and apt phraseology and breaking the shackles of iniquitous and obsolete precedents made many of his judgments pieces of literary art. He is too large for the routine hack and his judgments are for critical times and large issues of awakening the consciousness of the people. It is a providential coincidence that his Lordship was on the Bench at a time when the Constitution of Free India was put on the statute-book and his Lordship was for a long time in charge of the Writ Bench where he had been virtually a judicial corrective on the administration. How many varieties of cases have come up before him and how many instances of arbitrariness of the executive or the transgression of the law by the quasi-judicial tribunals has he been rectifying these years. His comments on quasi-judicial tribunals getting out of their moorings in quest of social justice have almost become classic. Reading through his judgments one is reminded of the famous triumvirate of the American Supreme Court, Holmes, Cardozo and Brandeis.

On the last day of August, 1960, the Acting Advocate-General, Madras, Sri P. S. Kailasam, bade farewell to his Lordship who sat on the Bench for the last day as he was availing himself of leave before retirement. The Court-hall where the function was held and the corridors round the hall were filled by members of the Bar, the public and Officers of the High Court. After recounting the early career of his Lordship, the Acting Advocate-General said: "During your tenure as High Court Judge you were uniformly courteous and extremely pleasant to the members of the Bar, who felt thoroughly at home in your

Court. The entire Bar can testify that your Lordship made no distinction between different members of the Bar and always treated juniors and seniors alike with the result that every one who came out of your Court had the satisfaction that he had his full say ". At the farewell function of the Advocates' Association, Mr. T. M. Krishnaswami Ayyar, President of the Association, said " In all these fifty-three years I have been at the Bar, I have not witnessed such a unified, affectionate and respectful reception as the present one. You are essentially a Judge, a great Judge and one of the greatest Judges that ever sat on any Bench of any High Court in any country. Members of the Bar experienced at your hands administration of justice as it ought to be and they all felt drawn to you both with affection and with respect ". Great compliments indeed but richly deserved ones at that.

Thanking the Advocate-General for the kind references made by him on behalf of the Bar, his Lordship, with his characteristic humour, referred to his early life and career. His Lordship said that early in his career he has been advised that Judicial Officers had no business to lose their temper, whatever be the provocation. But being human as they are, if by chance they lost their temper, they should not write their judgment that day but allow the temper to cool off and write the judgment the next day. Commenting on the trends in recent times his Lordship said that the need for an independent judiciary was more imperative now than it had been in the past. His Lordship said there were several reasons for this. Formerly the State was simply a leviathan. If they fell foul of it, the chances were that in nine cases out of ten they got the worst of the encounter. But then, so long as they minded their own business. the leviathan left them alone. But now all that had been changed. His Lordship added : " There are those, who claim that the State is becoming a benevolent Providence which will look after its citizens from even before they are born till after their mortal remains are finally disposed of. On the other hand, there are those, who allege that the State is becoming an octopus throwing out new tentacles day after day and that at the present pace, it will not be long before the citizen ceases to be a human being. On this controversy, I express no opinion and, in any case, the present is not a suitable occasion for that. But one thing is clear. Providence or octopus, the State is spreading itself out in all directions. Every session of the Legislature, State and Central, produces a crop of statutes, which it is by no means easy even for those who had full facilities in that respect to keep abreast of. And then there are the multitudinous rules, regulations, notifications and instructions to keep track of which is a whole-time job. Now every statute, every rule, every regulation and every notification produces its crop of disputes. In other words, the occasions when the citizen may find his views about the law to be at variance with those in whom the executive powers of the State happen for the time to be vested, are increased many fold."

" When the British ruled the land," his Lordship said, "except in cases where imperial or racial considerations were involved, officers vested with executive authority were able to deal with the issues before them in an objective fashion. He was by no means sure that they could say that now. At the back of their minds, consciously or unconsciously, but always effectively bearing on the questions before them, were electioneering considerations and party affiliations. This is perhaps inevitable in a democracy ; but as I see it that is the more reason why a citizen

who is prejudicially affected by a decision made by the executive authority should be able to invoke the assistance of a Tribunal that would not be influenced by such consideration. I would only emphasise that with every expansion of State activity, the need for judicial protection of the citizen increases. A learned critic of present-day conditions in one of the States of the British Commonwealth of Nations made this comment in an article he contributed to the Modern Law Review ' the sensitiveness of Judges to ministerial susceptibilities is ominous '. I pray that the time will never come when it will be possible for a fair-minded critic of our institutions to make such a comment on the Judges of this Court or of any other Court in this land ".

His Lordship expressed his thanks for the help he had received from the Chief Justice and the other Judges of the High Court. " From the Registrar down to the humblest clerk, all had striven to help me. Without implying any disparagement to the others, I would make special mention of the Bench-clerks and Shorthand writers because it was with them that my contacts has been more constant and intimate. I would give them my special thanks " concluded his Lordship. When his Lordship took leave of those present their affection and regard for him was so spontaneous and visible that they lined up the corridors on both sides, in depths of three and four, and greeted him as he left for his Chambers.

Thanking the President of the Advocates' Association for his words of high praise his Lordship said that his first fifteen years of life was shaped in the background of the old traditional values and norms of conduct, which are being rapidly submerged by the new urban civilisation. His Lordship said that in the field in which he worked he attempted to adopt the high standard that was expected of him and he was gratified in the knowledge that he is retiring with the good-will and esteem of those associated with him and who are in the best position to decide. His Lordship took leave of the members of the Bar and the staff of the High Court as he was proceeding on leave preparatory to his retirement.

We offer our felicitations to his Lordship on his illustrious career and wish him a long and happy life.

NEW JUDGES OF THE MADRAS HIGH COURT.

Three more Judges have been appointed to the Madras High Court and they have assumed charge of their office this week. The High Court Bench has now a complement of twelve Judges and this will go a long way to relieve the arrears of work in the Court and achieve the cherished objective of the public and the Government that cases should be disposed of expeditiously. The routine class of cases or appeals may probably be a little less before the High Court in times to come due to the enhancement of the monetary limit of the appellate jurisdiction of the District Courts. But then the enormous growth of legislation in recent years, which is in itself new and unprecedented in its content and scope, has in turn given rise to a volume of litigation which has to be tackled on first principles. More than at any other period in the past the State now figures very much in Courts in their administrative and trading spheres. The citizen is more often at a disadvantage when he has to prosecute a cause against the State. Such causes cannot be rushed through and the High Court of the State should have its full strength to deal with these matters effectively. There is also now the widespread belief among the members of the Bar that original suits of over a specified monetary value may be taken over to the original side of the High Court. We welcome the new appointments which are both timely and necessary.

It will indeed be superfluous to introduce the new Judges to the Madras Bar and the public. They have all been in active service in one sphere or other in Madras for the past several years and have become familiar to one and all.

HON'BLE MR. JUSTICE T. VENKATADRI.

Sri T. Venkatadri, a senior member of the Madras Bar, has the unique distinction of having been trained under a family of eminent advocates who were all elevated to the Bench. Born in 1906, in North Arcot District of Madras he graduated from the Presidency College, Madras, and took his Law Degree from the Madras Law College. He entered as an apprentice the chambers of Sri P.Venktaramana Rao who later became an illustrious Judge of the Madras High Court and subsquently the Chief Justice of the Mysore High Court. Enrolled in 1934, he worked as a Junior under Sri P.V. Rajamannar, our present Chief Justice and Sri K. Subba Rao, who became judge of the Madras High Court, Chief Justice of Andhra Pradesh High Court and at present a Judge of the Supreme Court of India, who were then commanding excellent work on the Appellate Side of the Madras High Court. Later, he worked in partnership with Sri C. A. Vaidyalingam, who later became a Judge of the Kerala High Court.

With this tradition and opportunity in his legal career Sri Venkatadri built up a lucrative and class work on the Appellate Side and has won many laurels as evidenced by the large number of reported cases wherein he appeared. His services were availed of by several statutory corporations and incorporated companies such as the Madras State Electricity Board, Madras Industrial Investment Corporation, Ltd., Egmore Benefit Fund Society to mention a few.

Though his whole time was taken up in the profession Sri Venkatadri is of the clubbable class and is an entertaining conversationist and a good mixer. A member of the Cosmopolitan and the Gymkhana Clubs, he has a large circle of friends. He is associated with charitable organisations like the Chennapuri Annadhana Samajam and the Kotta Varadappa Naidu's Charities.

HON'BLE MR. JUSTICE P. RAMAKRISHNA IYER.

Sri P. Ramakrishna Iyer comes to the Bench from the reputed Indian Civil Service. Born in 1908, in the Kanyakumari District in the extreme South, he had his early education and post-graduate study in Trivandrum and passed out of the Maharajah's College of Science, Trivandrum, in 1925 in Mathematics Honours. He served for some time as Lecturer in the Travancore Educational Service from whence he passed the open competitive examination for the I.C.S. held in Delhi being placed second in the list. After further training between 1930 and 1932 at the Cambridge University, his first assignment was in 1932 as Assistant Collector of Chittoor, in the then composite Madras State. In subsequent years he was Under Secretary to the Government of Madras and served as Joint and Additional District Magistrate in several Districts. In 1941 he joined the judicial wing and had his training in Tinnevelly District under Sri P.V. Balakrishna Iyer, I.C.S., who was then the District Judge and who retired quite recently from the Bench of the Madras High Court. First posted as District and Sessions Judge of Guntur he later served in that capacity in the Districts of Ramnad, South Arcot, Chittoor and Madura. In 1953 he became the Chief Presidency Magistrate, Madras and later in 1955 was appointed Chairman of the Sales-tax Appellate Tribunal. He was appointed in 1959 as a Special Judge to try the Ramanathapuram rioting cases and was a member of the State Pay Commission.

Sri Ramakrishna Iyer is a tennis enthusiast and is a longstanding member of the Presidency Club. Widely read, and proficient in Sanskrit he is of a scholarly turn of mind.

HON'BLE MR. JUSTICE P. S. KAILASAM.

Sri P. S. Kailasam is well-known to the members of the Bar and the public of Madras. Of a smiling disposition, soft in voice and dignified and quiet in bearing, he endears himself to everyone with whom he comes into contact. Born in Salem District in 1915 in a family of landed aristocracy he had his early education in the Ramakrishna Mission Home and the P. S. High School and had earned the reputation of being a model student in these institutions. Graduating from the Presidency College, Madras, he took the Law Degree from the Madras Law College. He was enrolled as an Advocate of the Madras High Court in 1938 and was a junior under the late Sri V. L. Ethiraj, the well-known leader of the Madras Bar on the Criminal Side. Later he joined the chambers of Sri N. Somasundaram, who rose to the Bench. He commanded an extensive and lucrative practice on the Criminal Appellate side in the High Court. It came as no surprise when he was chosen to be the Public Prosecutor of Madras in January, 1956. His advocacy was neat and sharp and in the short period of service as Public Prosecutor he earned the great reputation of his illustrious master, Sri V. L. Ethiraj, of being an able and impartial prosecutor and commanded regard and respect from the Bench and Bar alike. He was associated with our Madras Law Journal (Criminal) as a member of the Editorial Board. Quite sociable by nature Sri Kailasam is a familiar figure in social gatherings and club functions.

Their Lordships took their seats on the Bench on 20th October, 1960 and were given a warm welcome by senior members of the Bar.

We offer their Lordships our sincere felicitations on their elevation to the Bench and wish them all success.

[SUPREME COURT.]

S. J. Imam, A. K. Sarkar and Raghubar Dayal, JJ.
27th September, 1960.

Padam Sen *v.* State of Uttar Pradesh.
Cr. A. No. 149 of 1958.

Penal Code (XLV of 1860), *section* 165-*A—Scope—Civil Procedure Code (V of* 1908), *sections* 75 *and* 151 *and Order* 26*—Commissioner appointed by Court without power—Not a 'public servant'—Abetment of—Not offence under section* 165-*A, Indian Penal Code.*

The Additional Munsif had no power to appoint a Commissioner to seize the books and the order passed by him was one without jurisdiction and as such was null and void. In the present case as there was neither an existing Commissioner nor had the Additional Munsif power to appoint him, the Commissioner could not be held to be a public servant. The appellants were, therefore, held not to have committed an offence under section 165-A, Indian Penal Code (abetement of taking illegal gratification by a public servant.)

N. C. Chatterjee, for Appellants.

G. C. Mathur, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
3rd October, 1960.

State of Madhya Pradesh *v.* Baldeo Prasad.
C.A. No. 271 of 1957.

Central Provinces and Berar Gundas Act (as amended by the Madhya Pradesh Act XLIX of 1950)*—Article* 19 (1) (d) (e) *of the Constitution.*

The definition of the word "Goonda" in the C. P. and Berar Goondas Act did not afford any guidance to the District Magistrate in deciding which citizen could be put under that category. The result of these infirmities, was that the authority concerned could treat any citizen it liked as a " goonda " and place restrictions on his fundamental rights.

" The restrictions which the legislation allows to be imposed on the exercise of the fundamental right of a citizen guaranteed by Article 19 (1) (*d*) and (*e*) must, in the circumstances, be held to be unreasonable ".

M. Addikari, Advocate-General, for Appellant.

R. Patnayak, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
3rd October, 1960.

Madhorao Phalke *v.* State of Madhya Pradesh.
C.A. No. 84 of 1954.

" *Kalam Bandis* "*—Whether Rules or Regulations having force of law in the State of Gwalior.*

The main question for decision was whether the Kalam Bandis on which the appellant bases his right can be said to have been rules or regulations which had the force of law in the State of Gwalior. The Court said that under an absolute monarchy orders issued by the Ruler would have the force of law and would govern the rights of the citizens. On considering the character of the orders contained in these Kalam Bandis the Court held that they were at least regulations having the force of law.

B. Sen, for Appellant.

M. Adhikari, Advocate-General, for Respondent.

G.R. ——— *Appeal allowed.*

M—N R C

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
3rd October, 1960.

Gangadharrao Narayanrao *v.* State of Bombay.
C.A. Nos. 155-160 of 1956.

Bombay Personal Inams Abolition Act XLII of 1953—*Bombay Acts II and VII of* 1863—*Articles* 31 *and* 31-*A of the Constitution.*

" Contention of the appellants therefore that Inams dealt with by the Act are not covered by the expression " estate " in Article 31-A of the Constitution fails. Their further contentions that their right to retain the difference between full assessment and quit rent is not a right in any estate also fails. The Bombay Personal Inams Abolition Act therefore when it extinguishes or modifies the right of Inamdars in the Inam estates is clearly protected by Article 31-A of the Constitution—

"The next contention is that the Act does not provide for compensation and it is therefore *ultra vires* in view of Article 31 of the Constitution. We find, however, that the Act has provided for compensation under section 10 so far as that part of Inam lands which are vested in the State by section 7 are concerned. Further section 17 provides for compensation in a possible case where any thing has been left out by section 7 and the Inamdar is entitled to compensation for it ".

" It is however clear that Article 31-A saves the Act from any attack under Article 31 which is the only Article providing for compensation. In this view of the matter the Constitutionality of the Act cannot be assailed on the ground that it provides no compensation for extinction of certain rights."

Purushotam Tricumdas, for Appellants.

H. N. Sanyal, Additional Solicitor-General of India, for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao, and K. N. Wanchoo, JJ.
3rd October, 1960.

Rangildas Varajdas Khandwala *v.* Collector of Surat.
C.A. No. 6 of 1959.

Bombay Personal Inams Abolition Act XLII of 1953—*Bombay Acts II and VII of* 1863—*Articles* 294 (b) 31 *and* 31-*A of the Constitution.*

Constitutionality of the Bombay Personal Inams Abolition Act is covered by Judgment in C.A. Nos. 155-160 of 1956. The only fresh point is that in view of Article 294 (*b*) of the Constitution and in view of the fact that the holder was given a *sanad* when his Inam was recognised it was not open to the State Government to enact a law which would in any way vary the terms of the *sanad.* This argument based on the immutability of the *sanads* was rejected by the Federal Court in 1946 F.C.R. 111 and (2) has also been rejected by this Court in 1955 S.C.J. 472 : (1955) 2 S.C.R. 164. We also reject it for reasons given in the two cases cited. The challenge therefore to the Constitutionality of the Act fails in the present appeal also.

" It is not in dispute that there has in fact been no assessment under Chapter VIII-A in this case. We are therefore of opinion that as the land in this case was not wholly exempt from revenue and as in fact no assessment has been fixed on this land under Chapter VIII-A, section 52 would apply and the Collector would have power to make an assessment in the manner provided by that section ".

D. P. B. Padye, for Appellant.

H. N. Sanyal, Additional Solicitor-General of India, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
14th October, 1960.

State of Bihar *v.* Kirpa Shankar Jaiwal.
Cr.A. No. 83/59.

Industrial Disputes Act (XIV of 1947), sections 11 (2), 12, 22, 20, *and* 18 (3) (*a*) & (*b*)—*Scope.*

[Following their own Judgment reported in (1960) 1 S.C.R. 726 at 736: 1960 S.C.J. 91, the Court *held,* "This shows that all disputes between the parties have been settled and workmen have been reinstated". In view of this in the words of Subba Rao, J., in the *State of Bihar* v. *Hira Lal Kejriwal and another.* "Public interest does not require that the stale matter should be resuscitated". Therefore we do not think it necessary to interfere under Article 136 with the Order of the High Court." Other cases considered : (1960) 2 L.L.J. 37 at 38 ; 1959 S.C. 841 : 1959 S.C.J. 909.

D. P. Singh, for Appellant.

C. P. Lall, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, K. C. Das Gupta, J. C. Shah and N. Rajagopala Ayyangar, JJ.
18th October, 1960.

Nathmal Tolaram *v.* Supdt. of Taxes.
C.A. No. 196 of 1958.

Assam Sales-tax Act (XVII of 1947), *section* 2 (12), *Explanation.*

The High Court's answer to the question referred to it was :—" The transaction not being a sale within the meaning of sub-section (12) of section 2 of the Act the consignments are not taxable ".

The Supreme Court *held* : " That any further proceedings for assessment had to be taken under some authority of law. In the present case the High Court did not make any such direction nor was there any other legal authority ".

Sukumar Mitter, for Appellant.

Veda Vyasa, for Respondents.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. J. Imam, A. K. Sarkar and Raghubar Dayal, JJ.
19th October, 1960.

Th. Kesari Singh *v.* State of Rajasthan.
C.A. No. 277 of 1957.

Marwar Tenancy Act (XXXIX of 1949)—*section* 85—*Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, I of* 1951—*Notification under section* 85 *of the Marwar Tenancy Act—Its vires challenged—Temporary legislation.*

" We have given anxious consideration to this question but have not been able to agree with the view taken by the High Court. It seems to us that the Rules made under sections 85 of the Tenancy Act had not laid down any special procedure. The only rule relevant in this connection is rule 34 to which we have earlier referred. All that the rule does is to require the Deputy Commissioner to check the list, a duty which under the section itself he has to perform and also makes it necessary for him to examine the patwari for the purpose. The rules did not indicate how

the application is to be heard, *i.e.*, whether *ex parte* or on notice. In our view, for the reasons aforesaid, the application under that section was properly and correctly heard and determined without notice to the tenants. Such hearing does not disclose any error at all.

"In our view steps can be taken under section 85 of the Marwar Tenancy Act, (XXXIX of 1949) by the appropriate Revenue Officer for realisation of rent found due as arears of land revenue even after the notification under that section has been rescinded."

As regards the arguments that the Notification under section 85 of the Marwar Tenancy Act is *ultra vires*, we do not allow this point to be raised here for the first time when it was not taken up in the High Court.

N. C. Chatterjee, *Suresh Aggrawal*, and *Ganpat Rai*, for Appellant.

R. K. Rastogi and *K. L. Mehta*, for Respondents.

G.R. — *Appeal allowed.*

[Supreme Court.]

S. K. Das and J. C. Shah, JJ.
25th October, 1960.

P. C. Joshi *v.* The State of U. P.
Cr.A. No. 130 of 1960.

Penal Code (*XLV of* 1860), *section* 500—*Sanction for the prosecution—Sections* 198 *and* 198-*B—Scope.*

Section 198-B was not intended to be supplementary but provided only an alternative remedy in the case of a person like the Chief Minister or other officials set out in section 198-B.

"There can be no doubt that in a democratic set-up, in order to maintain purity of public behaviour and administration, charges of improper conduct against persons in the second class, in so far as such charges relate to the discharge of their public functions should be investigated.

"It is also in the public interest that in vindicating his character or conduct, the person defamed should not ordinarily be called upon to bear the burden of what may turn out to be an expensive and long drawn out proceeding, nor for obvious reasons should he have control over the proceedings".

N. C. Chatterjee, for Appellant.

G. S. Pathak, for Respondent.

G.R. — *Appeal dismissed.*

[Supreme Court.]

P. B. Gagendragadkar, A. K. Sarkar K. Subba Rao, K. N. Wanchoo and J. R. Mudholkar, JJ.
26th October, 1960.

District Board of Ghazipur *v.* Shri Lakshmi Narain Sharma.
C.A. No 372 of 1956.

U. P. Rice and Dal Control Order—Pure Food Act—U. P. Panchayat Raj Act—District Board's power to regulate trade.

The fact that the respondent had paid the fees under the Pure Food Act and the U. P. Rice and Dal Mills Control Order could not absolve him from obtaining a licence under the District Board Act. The U. P. Panchayat Raj Act does not divest District Boards of their power to regulate trade.

G. C. Mathur, for Appellant.

G. P. Singh, for Respondent.

G.R. — *Appeal allowed.*

[SUPREME COURT].

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao, and K. N. Wanchoo, JJ.
27th October, 1960.

Makhanlal Malhotra *v.* Union of India.
W. P. No. 44 of 1958.

Displaced Persons (Claims) Supplementary Act, rule 5—*Displaced Persons Compensation and Rehabilitation) Act, rule* 65—*Article* 31 (5) (b) (*iii*) *of the Constitution.*

"The object of the impugned provisions is to rehabilitate the evacuees on an equitable basis. To implement the scheme of rehabilitation the evacuee law has classified evacuees under different categories. Broadly speaking the main division is between persons who were residing in Pakistan in rural areas with agriculture as their avocation and those who were residing in urban areas in Pakistan. This classification has certainly a reasonable relation to the object of the rehabilitation.

"The clasification of rural and urban property and of rural houses made under the rules in question was not arbitrary and was based on sound and equitable principles. It could not be therefore said that the rules suffered from infirmity on the ground of discrimination".

The rules had only incorporated the provisions of the inter-Dominion Agreement between India and Pakistan which had received recognition in Article 31 (5) (*b*) (*iii*) of the Constitution.

Naunit Lal, for Petitioners.

H. N. Sanyal, Additional Solicitor-General of India, for Respondent.

G.R. *Petition dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
27th October, 1960.

Sarat Chandra Rabha *v.* Khagendranath Nath.
C.A. No. 375 of 1959.

Representation of People Act (*XLIII of* 1951), *section* 7—*Criminal Procedure Code* (*V of* 1898), *section* 401—*Remission of sentence.*

"We cannot agree that remission by the Government has the same effect as the order passed by the Court of law in appeal or revision. Where a sentence imposed by a Court is remitted in part under section 401 of the Code of Criminal Procedure that has not the same effect in law of reducing the sentence imposed by the Court, though in effect the result may be that the convicted person suffers less imprisonment than that imposed by the Court".

The order of remission affects the execution of the sentence imposed by the Court but does not affect the sentence as such, which remains what it was in spite of the order of remission. We are therefore of the opinion that the terms of section 7 (*b*) would be satisfied in the present case and the appellant would be disqualified as 5 years had not elapsed 'since his release' on the day of filing the nomination papers.

L. K. Jha, for Appellants.

G. S. Pathak, for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, K. C. Das Gupta, J. C. Shah and N. Rajagopala Ayyangar, JJ.
28th October, 1960.

R. P. Kapur. *v.* Sardar Pratap Singh Kairon.
W. P. 59 No. of 1960.

Constitution of India (1950), *Articles* 14 *and* 32—*Validity of the investigations by the Police.*

R. P. Kapur and others, the petitioners in the case, are obviously suffering from a sense of grievance that they have not had a fair deal. We have held that there is no legal justification for that grievance but in executive as well as judicial administration justice must not only be done but it must appear that justice is being done. An affidavit from the Chief Minister would have cleared much of the doubt.

"These are matters on which the Chief Minister alone is in a position to enlighten us. He owes a duty to this Court to file an affidavit stating what the correct position is so far as he remembers it. This is not a case where the refutation should have been left to the Secretaries and other Officers who could only speak from the records and were not in a position to say why the Chief Minister passed certain orders."

The petitioners had failed to establish that the procedure adopted was in fact illegal or that they had been unfairly discriminated against.

A. S. R. Chari, for Petitioner.

S. M. Sikri, Advocate-General, Punjab, for Respondents.

G.R. *Petition dismissed.*

Rajamannar, C.J., and Veeraswami, J.
24th June, 1960.

Alagammai Achi *v.* Viruthagiri Chettiar.
Appeal No. 446 of 1955.

Banker—Nattukottai Chetti community—Maral or Maraldar—Implication of.

The word 'maral' literally means 'through' and in the banking business of Nattukottai Chetti community of Southern India it generally conveys the idea that the deposit has been made on the recommendation or introduction of the person named as 'maraldar'. The maraldar is not a trustee or agent and the money deposited belongs to the 'vilasamdar' and not to the maraldar, though sometimes the word 'maral' may include authority for the maraldar himself to collect or operate on the deposit with or without the consent of the vilasamdar. Where the intention is that the maraldar should serve as a check, the vilasamdar may not be able to collect or operate on the deposit without the concurrence of the maraldar. In spite of these general features which characterise a maraldar, the precise meaning of 'maral' or 'maraldar' in a given case, and his powers and responsibilities are essentially a question of fact depending on the intention of the parties to be gathered from the terms of the deposit and other relevant facts including the conduct of the parties.

A. V. Narayanaswami Aiyar and *R. Venkatachalam*, for Appellants.

R. Gopalaswami Ayyangar and *V. Ramaswami Ayyar*, for Respondents.

R.M. *Appeal dismissed.*

Jagadisan, J. Subbaraya Chettiar *v.* Vaidyanatha Mudaliar.
11th July, 1960. S.A. No. 304 of 1958.

Madras Agriculturists' Relief Act (*IV of* 1938), *section* 13—*Scaling down of debts under—Re-opening of transaction—Scope of.*

Section 13 of the Madras Agriculturists' Relief Act, 1938, is a specific provision with regard to debts incurred after the Act and there is no provision under it to scale down debts by tracing the debt back to its inception as in cases under sections 8 and 9 of the Act. Hence where a debt incurred for the first time after the Act has been renewed several times by adding interest in excess of the statutory rate in a suit brought on the last promissory note the debtor cannot claim to reopen the last transaction and get the interest calculated on the original debt at the statutory rate.

(1958) 2 M.L.J. 568 (F.B.), referred.

V. C. Viraraghavan, for Appellant.

M. Natesan, for Respondent.

R.M. *Appeal allowed.*

Jagadisan, J. Subramaniam Chettiar *v.* Anandavalli Achi.
27th July, 1960. S.A. No. 531 of 1958.

Limitation Act (*IX of* 1908), *section* 10—*Scope and applicability—Trust to which it could apply.*

Section 10 of the Limitation Act which provides specifically for cases of following trust properties in the hands of persons in whom it is vested, contemplates the existence of a valid trust. The 'vesting' contemplated in the section is nothing more than the transfer of the trust estate which is also one of the essentials of a complete and valid trust. The section could be invoked only in cases of what are called 'express trusts' and not in cases of constructive or resulting trust which arise by operation of law.

(1937) M.W.N. 493, approved.

I.L.R. 1946 Mad. 429, doubted.

T. Venkatadri, for Appellant.

D. Ramaswami Ayyangar and *S. Natarajan*, for Respondents.

R.M. *Appeal dismissed.*

Rajamannar, C.J., and Veeraswami, J. Umar *v.* Mohd. Sahul Hameed.
4th August, 1960. W.A. No. 64 of 1960.

Madras District Muncipalities Act (*V of* 1920)—*Election rules—Power of Election Officer to re-count and re-scrutinise votes.*

Obiter—In view of the absence of any statutory provision in the rules framed under the Madras District Muncipalities Act it is doubtful whether an election officer acting under the rules has a right to re-scrutinise and reject the votes, originally counted as valid, at the time of a recount, which also is not authorised by the statutory rules.

V. V. Raghavan and *N. M. Md. Khan*, for Appellant.

S. Mohan Kumaramangalam and *T. Martin*, for Respondent.

R.M. *Appeal dismissed.*

Jagadisan, J. Seth Mengraj *v.* S.M.E.S. Corporation.
5th August, 1960. S.A. No. 496 of 1958.

Companies Act (VII of 1913), section 30 (2)—'Person'—If includes a partnership firm.

Indian Partnership Act (IX of 1932), section 4—Person—Meaning.

The word 'person' in section 4 of the Indian Partnership Act, contemplates only natural or legal persons and a firm is not such a person and cannot enter into partnership with another firm or individual.

A firm is not a person within the meaning of section 30 (2) of the Indian Companies Act, 1913 (now repealed by Act I of 1956).

S. Amudachari and *A. V. Raghavan*, for Appellant.

R. Narasimhachari, N. Varadarajan, V. Seshadri, T. R. Mani and *A. Sundaram Ayyar*, for Respondents.

R.M. ——— *Appeal dismissed.*

Veeraswami, J. Somasundaram *v.* Ramanathan.
11th August, 1960. S.A. Nos. 727 and 728 of 1958.

Limitation Act (IX of 1908), Article 116—Document registered—Meaning of.

The word 'registered' in Article 116 of the Limitation Act should be construed according to the definition of the term in the General Clauses Act, *viz.*, registered in India under the law for the time being in force for the registration of documents. Since Burma has ceased to be part of India since 1st April, 1937, a document registered in Burma after that date will not be a document registered within the meaning of Article 116 of the Limitation Act.

M. Ramachandran, T. V. Balakrishnan and *T. S. Srinivasan*, for Appellants.

K. Parasaran and *V. Meenakshisundaram*, for Respondents.

R.M. ——— *Appeal allowed.*

Balakrishna Iyer and Jagadisan, JJ. Palanichami *v.* Arumugha.
12th August, 1960. Appeal No. 44 of 1957.

Registration Act (XVI of 1908), section 49 (a) & (c)—Scope of—Unregistered partition deed—If admissible to prove the joint family properties.

Section 49 of the Indian Registration Act imposes only a limited ban on the admissibility of documents which require to be compulsorily registered. An unregistered partition deed entered into between the members of a Hindu joint family can be relied upon by the Court for the purpose of ascertaining the joint family properties available for division among the members.

T. M. Krishnaswami Ayyar and *A. Balasubramanian*, for Appellant.

M. Natesan, for Respondent.

R.M. ——— *Appeal dismissed.*

Rajamannar, C.J., and Veeraswami, J. Seethalakshmi Ammal *v.* Krishnaswami Rao.
25th August, 1960. S.A. No. 702 of 1957.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948)—Charge created on private lands in an estate for unpaid purchase money—Effect on after notification under the Act.

Under section 12 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, the landholder is entitled to a ryotwari patta in respect of his private lands. Hence a charge created for unpaid purchase price will enure over

such lands and the charge holder cannot be deprived of his security over the lands even though they have ceased to be private lands but continue to be the property of the landholder. The ownership of the private lands continue with the erstwhile zamindar with a change in the nature of the tenure." Hence the charge would continue to subsist in respect of the private lands for which under section 12 of the Act a ryotwari patta is issued to the landholder.

R. Rangachari, for Appellant.

V. Vedantachari and *T. Rangaswami Ayyangar*, for Respondent.

R.M. *Appeal dismissed.*

Ramachandra Iyer, J. Indian Metal and Metallurgical
25th August, 1960. Corporation *v.* Industrial Tribunal.
W.P. Nos. 925, and 1002 to 1004 of 1958.

Industrial Disputes Act (*XIV of* 1947), *section* 33 (2)—*Application for sanction under—Duty of tribunal—Disciplinary action—Enquiry by management—Procedure of—"Strike"—What is.*

An Industrial Tribunal is bound to accord its sanction to an application by the management under section 33 (2) of the Industrial Disputes Act if a case is made out for such sanction by the Management. Refusal to do so will amount to refusal to exercise its jurisdiction and such an order of the tribunal is liable to be set aside under Article 226 of the Constitution of India.

In cases of domestic inquiries by an employer against his employee, whose relationship is contractual and not governed by statute, the rule that a prosecutor cannot himself be a judge cannot apply in all its rigour, so long as the proceedings are not vitiated by unfair practices or want of good faith, etc. In cases of inquiry conducted by an employer against an employee for misconduct it may be that the misconduct charged against the employees might be one known to the employer himself or it may be brought to his notice by somebody else. In either case the employer would be entitled to hold an enquiry and punish the employee if he finds the charge proved. The fact that the employee had personal knowledge of the misconduct charged does not disqualify him from holding the enquiry himself nor is it necessary in such cases that the employer should first examine himself. Except in cases of *mala fides* or where the charge is based on information supplied by another person it is needless to let in formal evidence of the misconduct where it is committed in the presence of the employer and the charge is clearly brought to the notice of the employee.

A mere abstention from work by the employees in concert will not in itself amount to a strike. In order to constitute a strike there should be an animus against the employer. Though a strike need not be for getting benefits to the strikers themselves, the object should be to bring pressure on the management. Where workers abstain from work out of sympathy to a cause wholly unrelated to their employment is will not amount to strike, though it might amount to a misconduct of wilful abstention from work.

M. R. Narayanaswami and *N. Kannan*, for Petitioner.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondent.

R.M. *Rule absolute.*

Srinivasan, J.
2nd September, 1960.

Alla Pichai Rowther *v.* Chokkanathaswami Temple.
A.A.O. No. 255 of 1959.

Madras Estates Supplementary Act (*XXX of* 1956), *section* 10—*Bar of jurisdiction of civil Courts under—Scope of.*

Section 10 of the Madras Act, 1956, has to be read in the light of the other provisions of the Act, and a civil Court will have jurisdiction to deal with any matter unless it is expressly deprived of it. The absence of any other Tribunal which can adjudicate upon a particular question will clearly show that the civil Court will have jurisdiction to deal with it. The bar of jurisdiction conferred under section 10 of the Act is not intended to be operative beyond the period when the Tribunals appointed under the Act could be properlv seized of the matter. If resort could not be had to the tribunals under the Act for a certain relief, the civil Court will be competent to determine the quection.

A. Sundaram Ayyar and *P. Balasubramaniam*, for Appellant.

R. Kesava Ayyangar, for Respondent.

R.M. *Appeal dismissed.*

Veeraswami, J.
9th September, 1960

Sundarambal *v.* Suppiah Pillai.
S.A. No. 957 of 1958.

Hindu Adoption and Maintenance Act (*LXXVIII of* 1956), *sections* 4, 20 *and* 24—*Effect of on rights under prior Hindu law and usage.*

The Hindu Adoption and Maintenance Act, 1956, is an amending and codifying legislation and has an overriding effect and prevails over all other laws or usages relating to maintenance among Hindus for which provision is made under the Act. Hence on and from the date on which the Act came into force, *viz.*, 21st December, 1956, the liability of a Hindu father to provide for the maintenance of his daughter will be governed by the statutory provsion under which the right to claim maintenance will cease on conversion of the daughter to another religion. The right to claim maintenance being a personal right, a person who has lost the right as a result of conversion to another religion cannot sue for past maintenance either, after the coming into force of the Act.

K. V. Srinivasa Ayyar, for Appellant.

N. S. Srinivasan, for Respondent.

R.M. *Appeal dismissed.*

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Jagadisan, J.
22nd January, 1960.

Srinivasan *v.* Kumarappa Chettiar.
A.A.A.O. No. 81 of 1959.

Civil Procedure Code (V. of 1908), *section* 48—*Limitation under—Effect of in cases where execution of decrees are stayed by special enactments like Madras Act (V of* 1954 *or I of* 1955).

Section 48 of the Civil Procedure Code fixes a period of limitation for purposes of execution of decrees and it has to be read with other saving provisions as to limitation under special enactments like the Madras Act (I of 1955) or the enactments that preceded it. It will be unreasonable to let section 48 of the Code to have a free play so as to destroy the beneficent effect of the special enactments relating to agriculturists. The total period of time by which execution of decrees was stayed by such enactments have to be excluded from the period of limitation prescribed under section 48 of the Code.

D. Ramaswami Ayyangar and *P. R. Varadarajan,* for Appellant.

R. Viswanathan, for Respondent.

R.M. ——— *Appeal dismissed.*

Ananthanarayanan, J.
9th February, 1960.

Miya Hajee Ismail Sahib *v.* Regional Director of Employees State Insurance Corporation.
A.A.O. No. 198 of 1959.

Employees' State Insurance Act (XXXIV of 1948), *section* 2 (*xii*)—*Factory—Tannery—If a factory.*

Taking the definition of the term factory in section 2 (*xii*) of the Employees' State Insurance Act, 1948, along with the definition of the term 'manufacturing process' and 'power' under the Factories Act, 1948, it is plain that a tannery wherein electrical energy is used for pumping water, which is used subsequently for several of the processes concerned in finishing the raw hides and skins, will come within the definition of the term 'factory' as the very pumping and storing of the water in the tannery will by itself amount to a manufacturing process and the pumping and storing of water is connected with the tanning process itself.

V. N. Srinivasa Rao and *C. S. Rajappa,* for Appellant.

The Government Pleader (*K. Veeraswami*), for Respondent.

R.M. ——— *Petition dismissed.*

Jagadisan, J.
12th February, 1960.

Govinda Chettiar *v.* Pachaiyappa Pandithar.
C.R.P. No. 167 of 1959.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7 (3) (*iii*)—*For purpose of a business which he is carrying on—Carrying on business—What is.*

What constitutes carrying on business is essentially a question of fact or a mixed question of fact and law and each case has to be decided on its own facts and no general proposition of law can be evolved. Even construing the terms most liberally in favour of the landlord it cannot be said that the mere fact that a license has been obtained from the municipality to run a flour mill can by itself satisfy the pre-requisite condition to evict a tenant under section 7 (3) (*iii*) of the Madras Buildings (Lease and Rent Control) Act, 1949.

K. Tirumalai, for Petitioner.

T. S. Ramaswami, for Respondent.

R.M. ——— *Petition dismissed.*

Ananthanarayanan, J.
16th February, 1960.

Sarojini Ammal *v.* Egmore Benefit Society Ltd.
C.C.C. A. No. 106 of 1957.

Civil Procedure Code (V of 1908), *Order* 21, *rule* 90—*Application under—Direction to furnish security—Failure to furnish security by judgment-debtor by the date fixed—Respondent voluntarily taking notice and filing objection—Effect of—Jurisdiction of Court to demand security.*

It is true that a Court when once it has admitted an application under Order 21, rule 90, Civil Procedure Code, without ordering any security, has no further jurisdiction to direct the furnishing of security.

(1955) 2 M.L.J. 99, ref.

But when a Court has ordered on such an application that security should be furnished by a specified date and the judgment-debtor has failed to furnish the same, from the mere fact that the Court inadvertently permitted the respondent, who took notice voluntarily, to file his objection, it cannot be implied that the Court has done something which it never intended to. In such cases the petitioner is not absolved from the duty of furnishing security in accordance with the order if he desires his application to be heard.

S. V. Venkatasubramanian and *V. Narayanamurthi,* for Appellant.

K. G. Manickavasagam, for Respondent.

R.M. ——— *Appeal dismissed*

Rajamannar, C.J., and
Basheer Ahmed Sayeed, J.
18th February, 1960.

Jayems Eng. Co., Coimbatore *v.*
Additional Commissioner of
Workmen's Compensation, Madras.
W.A. No. 70 of 1957.

Madras Shops and Establishments Act (XXXVI of 1947), *section* 4 (1) (*a*)—*Persons employed in position of management—Who are.*

The category of persons who would come within the class specified in section 4 (1) (*a*) of the Madras Shops and Establishments Act, *viz.*, persons employed in a position of management, is not confined only to a few persons like General Managers or Assistant Managers in an establishment, but will comprise all employees (not being however merely workmen, wage earners or members of the clerical department) who have certain amount of control of the affairs of the establishment. Where a person employed in the position of management in one branch is transferred to another branch and in pursuance of the order of transfer he hands over charge of the office of manager which he was holding till then, he does not *eo instanti* cease to be a person employed in the position of management. It will be an unwarranted narrow interpretation of section 4 (1) (*a*) of the Act to hold that the person's

status should be considered as in the period immediately antecedent to the dismissal or termination of his service.

M. K. Nambiar, K. K. Venugopal and *P. S. Raman*, for Appellant.

The Additional Government Pleader (*M. M. Ismail*), *V. Seshadri* and *K. S. Ramamurthi*, for Respondents.

R.M. — *Appeal allowed.*

Ananthanarayanan, J.
18th February, 1960.

Madras Motor Insurance Co., Ltd. *v.* Mohd. Mustafa.
C.C.C.A. 88 of 1957.

Motor Vehicles Act (IV of 1939), *section* 96—*Liability to Insurance Company—Owner of car parting with it to another—Policy if lapses—Accident occurring after parting with the vehicle but before transfer of ownership to another—Liability of Insurance Company.*

In view of the specific provision in section 96 of the Motor Vehicles Act it cannot be contended that a policy of insurance lapses the moment the insured parts with the ownership of the vehicles. Even if the insurer has any ground which would entitle him to avoid the policy as against the insured, the insurer cannot escape the liability to pay the victim of an accident so long as the policy is current and valid. Sale of the vehicle is not a ground under the section to avoid a policy of insurance. Hence where the owner of a vehicle which is insured under the Act against the third party risks sells the same to another but transfer of ownership or transfer of the policy has not yet taken place, and an accident occurs the insurance company cannot escape its liability under the policy.

R. Gopalaswami Ayyangar and *M. Sundaram*, for Appellant.

C. R. Krishna Rao and *Md. Habibulla*, for Respondent.

R.M. — *Appeal dismissed.*

Balakrishna Ayyar and Jagadisan, JJ.
3rd March, 1960.

Central Brokers, Madras *v.* Muthukrishnan Chettiar.
Appeal No. 284 of 1956.

Master and Servant—No binding contract as to remuneration—Relationship of employer and employee proved—Reasonable remuneration if could be awarded.

When once it is established that there is a contract of employment or service between an employer and an employee, the obligation to pay a reasonable remuneration for work done is imposed by law. The fact that there is no binding or concluded contract between the parties as to remuneration or that the quantum of remuneration was left to be fixed by agreement later, does not relieve the obligation to pay a reasonable remuneration. If services have been rendered by one to another it ought to be clearly and satisfactorily made out that those services were not to be remunerated.

V. Tyagarajan and *V. S. Ramakrishnan*, for Appellants.

P. S. Chandrasekhara Ayyar and *P. S. Ramachandran*, for Respondent.

R.M. — *Decree modified.*

Ananthanarayanan, J.
1st April, 1960.

Gulam Mohamed *v.* Ammani Ammal.
C.C.C.A. Nos. 18 & 22 of 1957.

Transfer of Property Act (IV of 1882), *sections* 106 *and* 111 (g)—*Notice to quit and forfeiture of lease—Requisites of a valid notice—Denial of lessor's title—When operates as forfeiture of lease.*

A valid notice to quit under section 106 of the Transfer of Property Act should determine the tenancy by the time of 15 days expiring with the end of the month of tenancy. The notice should specifically state what the month of the tenancy was.

In order to plead in a suit that a denial of the title of the lessor or a disclaimer of the tenancy operates as forfeiture of the lease under section 111 (*g*) of the Transfer of Property Act, the denial and forfeiture must have occurred prior to the suit and should form part of the cause of action on which the suit is based. A denial of tenancy after the suit is instituted will not operate as a forfeiture under section 111 (*g*) of the Transfer of Property Act.

A. Dorairaj, for Appellant in C.C.C. Appeal No. 18 of 1957 and for Respondent in C.C.C. Appeal No. 22 of 1957.

K. C. Jocob and *S. K. L. Ratan*, for Respondent in C.C.C. Appeal No. 18 of 1957 and for Appellant in C.C.C. Appeal No. 22 of 1957.

R.M. — *Appeal allowed.*

Rajagopalan and Ramachandra Iyer, JJ.
14th April, 1960.

Franciss Vallabarayar *v.* Commissioner of Income-tax.
R.C. No. 1 of 1956.

Income-tax Act (XI of 1922), *section* 10 (5) (c)—*Depreciation in case of property acquired by inheritance.*

It is true that section 10 (5) (*c*) of the Income-tax Act, which was introduced by the Amending of Act, 1953, provides for arriving at the written down value of assets acquired by an assessee by way of gift or inheritance whereas clauses (*a*) and (*b*) of section 10 (5) of the Act define the written down value with reference to the actual cost to the assessee. But even prior to the introduction of clause (*c*) an assessee would be entitled to depreciation allowance under section 10 (5) of the Act even with reference to property acquired by him by inheritance from his father. The original cost thereof to the assessee in such cases would be the real value of the property at the time the assessee acquired it.

I.L.R. 11 Rang. 514, followed.

The amendment made in 1953 by introducing clause (*c*) only gives statutory recognition to this principle which should govern the statutory expression 'actual cost to the assessee' in clauses (*a*) and (*b*) of section 10 (5). The limitation introduced by clause (*c*) as to cases where the market value in the hands of the assessee differs from the written down value in the hands of the previous owner would not apply to the earlier assessment of years, *i.e.*, earlier to 1953.

G. Vasantha Pai, for Petitioner.

C. S. Rama Rao Sahib and *S. Ranganathan*, for Respondent.

R.M. — *Answer in favour of the assessee.*

Somasundaram, J.
15th April, 1960.

The Public Prosecutor *v.* The Mettur Industries Ltd.
Crl. Appeal No. 355 of 1958.

Industrial Disputes Act (XIV of 1947), *section* 17-*A and section* 29—*Award enforceable on the expiry of thirty days of the publication—Effect of—Tribunal ordering reinstatement of a dismissed employee—Failure to implement the award within thirty days of its publication—If punishable.*

On a reading of section 17-A and section 29 of the Industrial Disputes Act, 1947, the expression " award being enforceable on the expiry of 30 days of its publication" in section 17-A would mean that the award of the tribunal must be given effect to by the time the award becomes enforceable, *i.e.*, within 30 days of its publication. Where an award directed the reinstatement of an employee, failure to do so within 30 days of its publication will be an offence punishable under section 29 of the Act.

The Public Prosecutor (*P. S. Kailasam*), in person.

Messrs. King and Partridge, for Respondent.

R.M. — *Appeal allowed.*

Balakrishna Ayyar and Jagadisan. JJ. Venkataramiah *v.* Indo-Commercial Bank, Ltd.

1st March, 1960. A. Nos. 192 and 337 of 1956.

Madras Agriculturists' Relief Act (IV of 1938), *section* 4 (e)—*Liability due to any corporation, etc., formed in pursuance of any special Indian "law"—Meaning of—Debts due to Banks—If exempt.*

Words and Phrases—"In pursuance"—Meaning of.

The expression ' Corporation formed in pursuance of any special Indian Law' in section 4 (*e*) of the Madras Agriculturists' Relief Act, 1938, is intended to apply only to statutory corporations or institutions such as the Reserve Bank of India, State Bank of India, Life Insurance Corporation, etc., and not to a Scheduled Bank. A Scheduled Bank cannot be said to be formed in pursuance of any special Indian Law. The expression ' in pursuance ' means carrying out or pursuing any plan, object or idea and a Scheduled Bank cannot be said to be formed to carry out any particular idea or object of the Legislature.

N. C. Raghavachari and *N. S. Varadachari,* for Appellant in Appeal No. 192 of 1956 and for Respondent in Appeal No. 337 of 1956.

K. S. Sankara Ayyar and *M. Natesan,* for Respondent in Appeal No. 192 of 1956 and for Appellant in Appeal No. 337 of 1956.

R.M. *Appeal dismissed.*

Veeraswami, J. Anthonimuthu *v.* Sethuranga Vallabanathaswamy Devasthanam.

4th March, 1960. C.R.P. No. 689 of 1959.

Madras Cultivating Tenants (Payment of Fair Rent) Act (XXIV of 1956), *section* 14 (2)—*Scope of.*

Section 14 (1) of the Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956, provides that the provisions of the Act are not applicable to cultivaitng tenants who own or who cultivate either as tenants or as owners or as both an extent of land in excess of the limit specified therein, *viz.,* 1 veli or 6⅝ acres. But sub-section (2) gives an option to such a cultivating tenant to relinquish at the end of the agricultural year ending in 1957 the land in excess of the limit and qualify himself for the benefit of the Act. The intention of the sub-section is that tenants who are in possession of land in excess of one veli should exercise the option to relinquish the excess in terms of the sub-section, *i.e.,* at the end of the agricultural year ending in 1957. If they fail to do so they will not be entitled to the benefit of the Act. The option given to the tenant to relinquish the excess land cannot be exercised at any time he likes.

K. V. Sankaran and *S. Palaniswami,* for Petitioner.

T. M. Chinnaiya Pillai and *T. S. Palanisivagurunathan,* for Respondent.

R.M. *Petition dismissed.*

Veeraswami, J. Govindarajulu *v.* Lakshmi Ammal

18th March, 1960. C.R.P. No. 2105 of 1959.

Civil Procedure Code (V of 1908), *Order* 26, *rule* 1—*Petition for examination of witness on commission on grounds of illness—Value, proof and admissibility of medical certificate.*

There is nothing in the Evidence Act which makes a doctor's certificate relating to the illness of a person by itself evidence at all. In order to rely on it as evidence it should be proved in the normal way by the testimony of the person giving it. The statement of a doctor in his medical certificate or report is not evidence unless he is called himself as a witness. The fact that such a medical certificate or report was called for by the Court itself does not make any difference to the principle.

(But in the instant case interference in revision was held not warranted as the erroneous decision on a question of law did not involve any question of jurisdiction.)

V. Vedantachari, T. Rangaswami Ayyangar and *A. Venkatesan*, for Petitioner.

R. Gopalaswami Ayyangar, for Respondent.

R.M. *Petition dismissed.*

Balakrishna Iyer and Jagadisan, JJ.
21st March, 1960.

Hadayath Unnissa Begum *v.* Spl. Dy. Collector, Tiruttani.
A. No. 587 of 1956.

Land Acquisition Act (I of 1894), section 27 (2)—Scope of—Words and Phrases—'Or'—When could be read as 'and'.

Sub-section (2) of section 27 of the Land Acquisition Act relating to award of costs in proceedings under the Act contemplates three contingencies. They are: (1) when the award of the Collector is not upheld, the Court shall ordinarily direct the Collector to pay costs; (2) But the Court is not bound to do so in every such case. If the Court should form an opinion that the claim of the applicant was extravagant or that he was negligent in putting his case before the Collector, the Court may make a different order as regards costs. In such cases the Court may direct that some deduction be made from the costs of the claimant or that he should pay a part of the Collector's costs. The word 'or' towards the end of the sub-section should be read as 'and' in order to give effect to the intention of the Legislature. The word 'or' cannot be read disjunctively as it would impose a limitation on the discretion of the Court which may promote hardship that could not have been intended.

A. V. Narayanaswami Ayyar, for Appellant.

The Government Pleader and *A. Ramanathan*, for Respondent.

R.M. *Appeal dismissed.*

Rajagopalan, J.
4th May, 1960.

Umar *v.* Mohd. Shahul Hameed.
W.P. No. 105 of 1960.

Madras District Municipalities Act (V of 1920)—Rules under—Rules for the Decision of Election Disputes—Rules 10 (c), 27, 27-A and 28—Effect of—Power of Election Officer to recount votes—Scope and extent of.

It is no doubt true that the Rules framed under the Madras District Municipalities Act relating to elections do not provide specifically enabling a recount of votes by the Election Officer. The combined effect of rules 27, 27-A and 28 is that in the process of counting the Election Officer has to scrutinise the votes and count only the valid ones. After completing the counting he has to fill up the form giving details of the votes polled by the contesting candidates and declare the result of the election. But in order to satisfy himself about the correctness of the counting and the arithmetical accuracy of the figures it is open to the Election Officer to check up the counting over again. It cannot also be laid down as an inflexible proposition of law that there should be no scrutiny of the votes at the time of such checking up. A recount of votes including a scrutiny that is incidental to such recount is permissible despite the absence of any express provision in the Rules in that behalf.

The Advocate-General (*V. K. Tiruvenkatachari*), *V.V. Raghavan* and *M. Md. Khan*, for Petitioner.

S. Mohan Kumaramangalam and *T. Martin*, for Respondent.

R.M. *Petition dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, K. C. Das Gupta and J. C. Shah, JJ.
21st July, 1960.

Bhagat Singh *v.* The State of Punjab.
C.A. No. 349 of 1957.

Government of India Act, 1935, *sections* 240 *and* 243—*Police Act* (*V of* 1861), *sections* 29 *and* 35—*Police Regulations.*

" In view of the special provisions in section 243 of the Government of India Act, 1935, relating to the subordinate ranks or police forces in India (to which the appellant undoubtedly belonged), section 240 (3) would have no application to members of such rank. The *non-obstante* clause in section 243 excluded the operation of section 240 (2) in the case of subordinate ranks of Police forces in India and conditions of service included the right of dismissal.

L.R. 75 I.A. 343 ; (1949) 1 M.L.J. 222 ; (1949) F.L.J. 1 and (1948) F.C.R. 103, referred to.

The same reasoning would, in our opinion, apply to section 240 (3).

L.R. 75 I.A. 225 ; (1948) 2 M.L.J. 55 ; 1948 F.L.J. 23 and 1948 F.C.R. 44 considered.

Har Dyal Hardy, for Appellant.

N. S. Bindhra, for Respondent.

G. R.

Appeal dismissed

Ramachandra Iyer, J.
24th March, 1960.

Foolchand *v.* General Manager, Southern Railway.
C.R.P. No. 1740 of 1959.

Civil Procedure Code (*V of* 1908), *Order* 1, *rule* 3—*Joinder of causes of action—Scope of.*

Order 1, rule 3, Civil Procedure Code, permits joinder of several defendants against whom any right to relief in respect of or arising out of the same act or transaction is alleged to exist whether jointly, severally or in the alternative, when if separate suits were brought against such persons, any common question of law or fact would arise. The words used are 'same act or transaction,' and not the 'same cause of action' and the provisions of Order 1, rule 3, are wider than the corresponding provisions of section 28 of the Civil Procedure Code of 1882.

N. R. Raghavachariar, for Petitioner.

C. Govindaraja Ayyangar, B. T. Seshadri and J. S. Vedamanikkam, for Respondent.

R.M.

Petition allowed.

Rajagopalan, J.
6th April, 1960.

Thayumanavar *v.* Collector of Madras.
W.P. No. 1037 of 1959.

Madras Cinemas (*Regulation*) *Act* (*IX of* 1955) *and Rules—Rule* 52 (1) *and section* 5 (2) (*a*)—*Compliance with—What constitutes.*

Rule 52 (1) of the Rules framed under the Madras Cinemas (Regulation) Act, 1955, requires that a permanent cinema should abut a public thoroughfare and should have a road frontage. 'Public thoroughfare' in the context means a public road. The mere fact that the proposed site of a cinema is given access through such piece of land over which the public have a right of way is not sufficient compliance with the rule. A footpath that could be used only by pedestrian traffic will not satisfy the requirements of the rule which uses the expression ' public thoroughfare' in conjunction with the expression ' road frontage '. The provision of such a pathway cannot be held to be sufficient compliance with the rules within the meaning of section 5 (2) (*a*) of the Act.

M—N R C

N. Venkatarama Ayyar, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *K. V. Sankaran* and *S. Ramaswami*, for Respondents.

R.M. ——— *Rule absolute.*

Ananthanarayanan, J. Kalimuthu *v.* Govindaswami.
26th April, 1960. C.R.P. No. 9 of 1960.

Civil Procedure Code (V of 1908), *section* 115 *and Order* 33, *rule* 8—*Practice—Leave to sue* in forma pauperis—*Interference in revision—Extent of.*

The true principle in all cases of granting leave to sue *in forma pauperis* is that it is primarily for the State to challenge the correctness of such orders as it is the State which is mainly interested in the payment of the Court-fee. Hence the High Court will not normally interfere in revision against such orders at the instance of the parties to the dispute.

K. S. Desikan and *K. Raman*, for Petitioner.

M. Ramachandran, for Respondent.

R.M. ——— *Petition dismissed.*

Rajagopalan, J. Perumal Chetty & Co. *v.* State of Madras.
4th May, 1960. W.P. Nos. 830 and 831 of 1959.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 13—*Exemption under—Validity of Order.*

It is now well-settled that the grant of exemption under section 13 of the Madras Buildings Lease and Rent Control Act, 1949, is not vitiated merely because it may result in eviction of a tenant on grounds other than those specified in section 7 of the Act. The exemption provision is not a substitute for a relief permissible under the Act itself but is intended to give relief to an owner when he is unable secure his remedy before the statutory tribunals and the justice of the case requires the grant of such relief.

S. Mohan Kumaramangalam, S. Gopalaratnam, M. R. Narayanaswami and *N. Kannan*, for Petitioners.

The Advocate-General (*V. K. Tiruvenkatachari*), the Additional Government Pleader (*M. M. Ismail*) and *T. K. Sundaram*, for Respondents.

R.M. ——— *Petition dismissed.*

Rajagopalan, J. Messrs. Lilarams *v.*
6th May, 1960. Joint Chief Controller of Imports and Exports, Madras.
W.P. No. 264 of 1959.

Import Policy Book—Section II, Part IV—Item 177 *and Appendix XLII—Scope of—Ceiling on import of art silk yarn—If authorises the Controller to impose an overall ceiling for the country as a whole or port-war within the country.*

The expression 'ceiling' in Entry 177 of Part IV, Section II of the Import Policy Book refers only to the maxima prescribed in paragraph 2 of Appendix XLII to the Book. The provisions read together contemplate only one ceiling, *viz.*, the ceiling that apply to each applicant for an import quota on the basis of the value of his exports. The adoption of an overall ceiling either for each Port or for the Union as a whole however prudent is not sanctioned by the directions in the Policy Book.

K. V. Venkatasubramania Ayyar, for *Messrs. K. C. Jacob* and *S. K. L. Ratan*, for Petitioners.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. ——— *Rule absolute.*

Balakrishna Ayyar and Jagadisan, JJ.
1st April, 1960.

Kanniappan Chettiar *v.*
Somasundaram Chettiar.
A. No. 305 of 1956.

Banker and customer—Nature of relationship between—Liability of banker to pay his customer—Extent of—Banking business—What is—Ordinary money-lending business—If banking business.

Though the relation of banker and customer in respect of a contract of loan or deposit is that of a debtor and creditor, in actions by the customer against the banker for recovery of the debt the Common law doctrine of the debtor being obliged to seek the creditor and pay the debt could have no application. The liability of the bank to pay the amount will arise only at the branch, where the account of the party is kept and there is no obligation on a bank to pay in one country a debt due to a customer on account in another country.

The essence of the relationship of banker and customer is the affording of the facility to the customer to draw funds from the bank by issuing of cheques. In the absence of such a facility the term 'banker', though loosely applied to money-lenders, cannot be applied to ordinary money-lending business carried on by Nattukottai Chettiars in India or in foreign parts. Hence the rules of Common law regarding the liability of a bank to pay the amount only at the branch where it is deposited cannot be applied to transactions with such money-lenders. Where money is deposited in Indian currency with a money-lender, who is a permanent resident of India, it is implicit that the borrower agrees to repay the money back in India and in Indian currency. The investment of the amount in a foreign firm is merely incidental to the use of the loan. A debt arising out of a contract is deemed to be situated in the place where it is properly recoverable, that is, normally the country where the debtor is resident.

K. S. Ramamurthi and *K. Sarvabhauman*, for Appellant.

R. Ramamurti Ayyar, *A. Venkatarama Ayyar* and *T. Ramalingam*, for Respondent.

R.M. *Appeal dismissed.*

Rajagopalan and Ramachandra Iyer, JJ.
4th April, 1960.

Karuppan Chettiar *v.*
State of Madras.
S.T.P. No. 107 of 1959.

Madras Estates (Supplementary) Act (XXX of 1956), *section* 7 *and Limitation Act (IX of* 1908), *sections* 29 (2) *and* 14—*Scope and applicability—Jurisdiction of the Special Appellate Tribunal to excuse delay on the ground of pursuing other remedies* bona fide.

Section 29 (2) of the Limitation Act will have the effect of applying the various sections referred to therein to proceedings under section 7 (1) of the Madras Estates (Supplementary) Act, 1956, which is a special or local law within the meaning of the expression as used in the said section of the Limitation Act. The nature of proceedings under section 7 (1) of the Madras Estates (Supplementary) Act, 1956, is not that of an appeal simpliciter but in the nature of an application as the jurisdiction of the Special Appellate Tribunal under the Act is wider than that of the original Tribunal. Hence the provisions of section 14 of the Limitation Act will be attracted to such proceedings. Where a party was prosecuting *bona fide* a writ application against the order of the Tribunal, the time taken therein could be excluded in computing the limitation under section 7 (1) of the Act.

R. Gopalaswami Ayyangar, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*) for Respondent.

R.M. *Orders accordingly.*

Rajagopalan, J. Pandian *v.* Board of Revenue, Madras.
15*th April*, 1960. W.P. No. 1392 of 1956.

Madras Estates Land (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), *section* 18—*Building—What constitutes—Private market in an estate—Nature of—If a building attracting the provisions of sub-section* (4) *of section* 18.

The right to hold a private market in an estate is not the same as a franchise incidental to the ownership of the estate and it cannot be said that the right to the market is lost when the right to the estate is lost on its vesting in the Government under the provisions of the Madras Estates Land (Abolition and Conversion into Ryotwari) Act, 1948. The expression 'building' in the absence of a statutory definition, has to be construed with reference to the contest of the particular enactment. Having regard to the scheme of section 18 of the Act a market consisting of only stalls would also be a building and the fact that the stalls were not all pucca masonry construction will not make any difference. The entire stalls and all the susperstructure should be viewed as one unit constituting a building. A private market will not fall within the scope of buildings referred to in sub-section (4) of section 18 and will fall within sub-section (4) of the section. The right to the building secured under sub-section (4) has to be viewed however independently of the rights to use the building in the particular way after the notified date.

M. Natesan, for Petitioner.

The Advocate-General (*V. K. Tiruvenkatachari*) and the Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. ——— *Rule absolute.*

Ananthanarayanan, J. Munuswami *v.* Kanniah.
15*th April*, 1960. C.R.P. Nos. 411 to 414 of 1960.

Provincial Small Cause Courts Act (IX of 1887), *section* 25—*Powers of revision under—Scope of.*

It is no doubt true that the powers of revision conferred under section 25 of the Provincial Small Cause Courts Act, 1887, are wider than the powers under section 115 of the Code of Civil Procedure. But it certainly is not equivalent to an appellate power and even if the High Court is of the view that a particular conclusion upon facts could well have been different it would not be a ground for the exercise of the revisional jurisdiction.

S. Vaidynathan and *R. D. Indrasanan*, for Petitioner.

Respondent not represented.

R.M. ——— *Petition dismissed.*

Ananthanarayanan, J. Chockalingam Chettiar *v.*
18*th April*, 1960. Chidambaram Pillai.
A.A. O. No. 353 of 1957.

Civil Procedure Code (V of 1908), *Order* 47, *rule* 1—*Review—' Any other sufficient reasons'—Meaning of.*

While it is true that the expression 'for any other sufficient reason' in Order 47, rule 1, Civil Procedure Code, should be construed *ejusdem generis* with the other provisions, of the rule laying down the limits of the exercise of the power of review, a too narrow interpretation of the words will not be in accord with equitable principles.

T. R. Ramachandran, for Petitioner.

N. Srivatsamani, for Respondent.

R.M. ——— *Orders accordingly.*

Ananthanarayanan, J.
18th April, 1960.

Nazimbunnissa Bi *v.* Syed Bashin.
C.R.P. No. 1633 of 1959.

Madras Cultivating Tenants' Protection Act (XXV of 1955) *and Rules, rule* 8—*Scope of —Applicability of the provisions of Civil Procedure Code to proceedings under the Act.*

The wording of rule 8 of the Rules framed under the Madras Cultivating Tenants Protection Act, 1955, is deliberately wide and does not limit itself to specific provisions of the Civil Procedure Code being made appelicable to proceedings under the Act. On the other hand under rule 8 (*i*) the Courts constituted under the Act are clothed with the powers to function like a civil Court and sub-rule (ii) of rule 8 makes the rules under Order 9 of the Civil Procedure Code specifically applicable. Hence where an application under the Act has been dismissed for default it should be set aside by due application under Order 9, rule 9, of the Code of Civil Procedure and if it is not done so a second application on the same cause of action cannot be made to the Court under the Act.

T. R. Ramachandran , for Petitioner.

R. Tirumalaiswami Naidu, for Respondent.

R.M. *Petition dismissed.*

Ramaswami, J.
27th April, 1960.

Kottachamy Thevar *v.*
Sonai Ambalam.
C.R.P. No. 783 of 1960.

Provincial Small Cause Courts Act (IX of 1887), *section* 25—Ex parte *judgment in Small Cause suits—Interference.*

In regard to Small Cause suits when the defendant remains *ex parte* no judgment is required to be written in accordance with the provisions of Order 20, rule 4, Civil Procedure Code. This is based upon the intelligible ground that where there is no contest it is unnecessary to raise the points for determination and give detailed reasons for the determination of those points. All that the Judge has got to do is to satisfy himself that the plaintiff is entitled to the decree asked for.

A. Sundaram Iyer, for Petitioner.

Respondent not represented.

R.M. *Petition dismissed.*

Anantanarayanan, J.
3rd May, 1960.

Narasram Naraindas *v.*
Venkataswami Naidu.
A.A.O. No. 246 of 1959.

Madras City Tenants Protection Act (III of 1922), *sections* 3 *and* 9—*Tenants erecting superstructure in contravention of the specific prohibition in the lease—If entitled to the benefits of protection and compensation under the Act.*

Having regard to the policy and scheme of the Madras City Tenants Protection Act, the benefits conferred by sections 3 and 9 of the Act could be claimed even by a tenant who has put up a superstructure on the land contrary to the terms of the contract of lease expressly prohibiting erection of any superstructure on the demised land.

(1959) 2 M.L.J. 469 : I.L.R. (1959) Mad. 997 : I.L.R. 54 Mad. 845 : 61 M.L.J. 535. Ref.

V. Meenakshisundaram and *T. V. Balakrishnan,* for Appellant.

S. Tyagaraja Ayyar, for Respondent.

R.M. *Appeal dismissed.*

Jagadisan, J.
31st May, 1960.

Manavan Badsha *v.* Narayanan.
C.R.P. No. 870 of 1959.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7 (2)—*Order of eviction passed under for default in payment of rent—Sale of property subsequently—Tenant attorning to the purchaser—Whether constitutes fresh tenancy so as to render original order of eviction inexecutable.*

The purchasers of an immoveable property in the occupation of a tenant get transferred to themselves all the rights of the lessor under section 109 of the Transfer of Property Act and are entitled to enforce an order of eviction obtained by their vendor against the tenant. The attornment of the tenant to the purchaser has no impact on the lease except for the substitution of one landlord for another and the terms and incidents of the lease continue to operate as before the attornment. It does not bring about a new tenancy or lease.

An attornment is the act of recognising a new landlord and is a continuation of the existing lease in all other respects. What constitutes a fresh contract of lease between the parties is a question of fact to be determined on the facts and circumstances of each case. But a mere attornment to a new landlord as purchasers of the property or the filing a fresh application for eviction by the purchasers or the institution of a suit for recovery of the arrears of rent by the purchasers cannot individually or collectively constitute a fresh tenancy agreement between the purchasers and the tenant after the purchase and it is open to the purchasers to execute the order of eviction obtained by the previous landlord, thereunder.

V. C. Viraraghavan, for Petitioner.

P. S. Chinnappa and *K. Hariharan,* for Respondent.

R.M. *Petition dismissed.*

Rajagopalan, J.
15th July, 1960.

Madras State Electricity Board *v.*
Commissioner of Labour.
W.P. No. 128 of 1960.

Madras Shops and Establishments Act (XXXVI of 1947), *section* 2 (3)—*'Commercial establishment'—What is—Clerical staff of the State Electricity Board—If within the Act.*

In order to bring the clerical staff of an establishment within the scope of section 2 (3) of the Madras Shops and Establishments Act, all that is necessary is that the establishment should be an industrial undertaking and there should be a clerical department of that undertaking. That the work of the Industrial undertaking was carried on in several places or that the clerical staff worked in several different buildings would make no difference.

The clerical staff of the Madras State Electricity Board would come within the scope of the Madras Shops and Estatblishments Act, as they would constitute a commercial establishment within the meaning of section 2 (3). The mere fact that the Board was under the control of the State Government would not take them outside the Act by virtue of the exemption under section 4 (1) (*c*) nor will the exemption under section 4 (1) of the Act apply to them. In the absence of any exemption given under section 6 of the Act the clerical staff of the State Electricity Board, which is an industrial undertaking, is a commercial establishment as defined by section 2 (3) of the Act and could claim the benefits of the Act.

T. Venkatadri and *S. Jayakumar,* for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *Messrs. Row* and *Reddy* and *N. C. Rangarajan,* for Respondent.

R.M. *Petition dismissed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah and J. C. Shah, JJ.
27th July, 1960.

Commr. of Income-tax *v.* Thakar Das Bhargava.
C.A. No. 236 of 1955.

Income-tax Act (XI of 1922)—Creation of a trust by the assessee of his professional income—Income when liable to income-tax.

The question " whether the sum of Rs. 32,500-00 received by the assessee in the circumstances set out in the trust deed, later executed by him on August 6, 1945, was his professional income, taxable in his hands or was it money received by him on behalf of a trust and not in his capacity as an individual ", can be decided by a very short answer, and that answer is that from the facts found by the Tribunal the proper legal inference is that the sum of Rs. 32,500-00 paid to the assessee was his professional income at the time when it was paid and no trust or obligation in the nature of the trust was created by the trust deed of August 6, 1945, in respect of the amount. He applied part of his professional income as trust property. If that is the true conclusion, the principle laid down by the Privy Council in *Raja Bejoy Singh Dudhuria* v. *Commissioner of Income-tax, Bengal,* (1933) 1 I.T.R. 135 : 60 M.L.J. 285, has no application.

M. C. Setalvad, Attorney-General of India, for Appellant.

N. C. Chatterjee, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, K. C. Das Gupta and J. C. Shah, JJ.
28th July, 1960.

Dalip Singh *v.* State of Punjab.
C.A. No. 235 of 1958.

Constitution of India (1950), *Article* 311—*Scope*——*Compulsory retirement—How far punishment.*

While determining the applicability of Article 311, the Court has to decide whether the action is by way of punishment or not. The Court held that the order impugned was " order for compulsory retirement for administrative reasons." It further observed that the order did not contain any imputation or charge against the officer concerned. Therefore, the retirement is " clearly not by way of punishment."

Gopal Singh, for Appellant.

N. S. Bindra, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao, K. N. Wanchoo, K. C. Das Gupta and J. C. Shah, JJ.
1st August, 1960.

Pandit M.S. M Sharma *v.* Dr. Srikrishna Sinha.
Petition No. 176 of 1959.

Constitution of India (1950), *Article* 212—*Prorogation of the State Assembly if dissolution—Privileges of State Assembly—Article* 19 (1) (*a*) *of the Constitution—Points decided by the Court in an earlier petition cannot be reopened.*

The validity of the proceedings inside the State Legislature could not be called in question under Article 212 of the Constitution. No Court can go into those questions, "which are within the special jurisdiction of the Legislature itself." The Court observed : " Once it had been held that the Legislature had the power to control publications of its proceedings and to go into the question whether there had been a breach of its privileges the Legislature is vested with complete jurisdiction to carry on its proceedings even though it may not be strictly according to the rules of procedure.

Negativing the contention about the abatement of the past proceedings, the Court held that the prorogation of the Assembly would not mean its dissolution. "The House remains the same. Only its sessions are interrupted by prorogation according to the exigencies of public demands on the time and attention of the members of the Assembly".

All those points which had been decided by earlier proceedings could not be reopened. (1959) S.C.J. 925, upheld.

Basdev Prasad, for Appellant.

Lall Narain Singh, for Respondent.

G.R. —— *Petition dismissed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah and J. C. Shah, JJ.
2nd August, 1960.

Hoshiarpur Central Co-operative Bank *v.* Commr. of Income-tax.
C.A. No. 238 of 1955.

Income-tax Act (XI of 1922), *section* 60—*Notification under exempting income of Co-operative Societies—Scope.*

Section 60 of the Indian Income-tax Act empowered the Central Government to exempt any class of income from the payment of income-tax. The Central Government had issued a notification under the provisions whereby the income of Co-operative Societies was given the benefit of the provisions. According to the Court the terms of notification were not limited to the income which accrued from business with members only but extended to the income of the society from the activities which were within the scope of its powers.

Deva Singh, for Appellant.

M. C. Setalvad, Attorney-General of India, for Respondent.

G.R. —— *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, A. K. Sarkar, K. N. Wanchoo and J. C. Shah, JJ.

Babu Barkaya Thakur *v.* The State of Bombay.
Writ Petition No. 134 of 1959.

Land Acquisition Act (I of 1894)—*Constitution of India* (1950), *Article* 31—"*Public purpose*".

"The phrase 'public purpose' has been used in a generic sense and will include any purpose in which even a fraction of the community may be interested or may be benefited".

The Land Acquisition Act is excluded from the purview of the Article 31 of the Constitution by the terms of that very Article.

Since the Land Acquisition Act was an existing law at the time of the enactment of the Constitution there was no conflict with the Constitution.

In conclusion it was held that the notification issued under the Act would not be illegal merely because it did not state the purpose of acquisition. "The requirements of the section would be satisfied if it is found on investigation that the land was in fact needed for the purposes of the company, and for public purposes."

J. C. Bhatt and *R. Ganapathy Aiyar,* for Petitioner.

N. S. Bindra, for Respondents Nos. 1 and 2.

S. K. Kapur, for Respondent No. 3.

G.R. —— *Petition dismissed.*

Balakrishna Ayyar and *Jagadisan, JJ.*
19*th April*, 1960.

Coonoor Co-oper. Urban Bank. Ltd. *v.*
Industrial Construction Co., Ltd.
Appeal No. 519 of 1956.

Building Contract—Lump-sum amount—What is—Claim for extra payment—When maintainable.

A lump-sum contract is a contract to complete a whole or entire work for a lump-sum. In the ordinary lump-sum contract the employer cannot refuse to pay the contractor merely because there are a few immaterial defects and omissions. If there is a substantial completion of the work he must pay the Contractor the stipulated price subject to deductions in respect of defects and omissions. As in general law of contracts affecting rights and liabilities of the contracting parties in a building contract also there is an obligation to do the work in a workman-like manner and carrying out of all work indispensably necessary for the completion of the work contracted for and any extra work done should be paid for separately. Unexpected labour caused by the difficulties of the terrain or the proposed method of carrying out of the work cannot be called ' extras ' as they are woven in the exture of the contract. But building a larger area that originally proposed or providing the building with materials or amenities, costlier than what was originally agreed between the parties, could certainly be classified as extras.

Messrs. Pais Lobo and *Alvares*, for Appellant.

R. Gopalaswami Ayyangar and *C. J. Sadagopachari*, for Respondent.

R.M. —— *Appeal dismissed.*

Ramachandra Iyer, J.
22*nd April*, 1960.

Presidency Transports *v.*
Regional Transport Authority, Madras.
W.A. No. 711 of 1958.

Motor Vehicles Act (IV of 1939) *and Rules—Section* 48 (2) *and Rule* 267*—Fixing the bus stops—Scope of powers—Variation of stopping places once fixed—If amounts to variation of conditions of permit.*

There are two metnods by which bus stops are regulated within municipal limits . They are (1) by virtue of the power given by the Statute, *e.g.*, section 48 (3) of the Motor Vehicles Act. In such cases the stopping places would become part of the conditions of the permit. (2) By a general order under rule 267 of the Motor Vehicles Rules. This power is intended to be exercised in the interests of the public as and when necessary to suit the changing conditions of the traffic, etc. It cannot be said that stopping places fixed under this rule prior to the grant of a permit automatically become places fixed under the permit itself. Though a permit-holder is bound by any order of the transport authority fixing the stopping places, there is no question of any variation of the permit in such cases.

T. Chengalvarayan, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. —— *Petition dismissed.*

Rajamannar, C.J., and *Veeraswami, J.*
26*th April*, 1960.

Thirumala Subbu Chettiar *v.*
Rajammal.
S.A. No. 20 of 1957.

Contract Act (IX of 1872), *section* 69*—Scope of—' Bound by law '—Meaning of.*

The expression ' bound by law ' in section 69 of the Contract Act is not confined only to those public duties which are imposed by statute or general law, but would cover obligations which arise *inter partes* arising in contract or tort.

(1950) 2 M.L.J. 1 (P.C.) followed.

32 M.L.J. 347, explained and doubted.

S. Srinivasachariar and *N. T. Raghunathan*, for Appellant.

T. Raghavan, for Respondent.

R.M. —— *Appeal allowed.*

Rajagopalan, J.
27th April, 1960.

Mohd. Hussain *v.* Dy Commissioner, H. R. & C. E., Tanjore.
W. P. No. 570 of 1959.

Madras Hindu Religious and Chartiable Endowments Act (*XIX of* 1951), *section* 87 —*Scope of—Certificate under—When could be issued.*

The enquiry that precedes the grant of a certificate under section 87 of the Madras Hindu Religious and Charitable Endowments Act, 1951, .is summary and the question of title to the properties in question is expressly left open for consideration by civil Courts. What the section authorises is recovery of trust property from (1) a trustee who has been dismissed or suspended from his office or (2) a trustee who is otherwise not entitled to be in possesion of the trust properties, or (3) a person claiming or deriving title from such trustee. 'Such trustee' in the context can only mean the trustee described under (1) and (2) above. The expression 'trustee not otherwise entitled to be in possession' cannot be extended to cover 'a deceased hereditary trustee who held the office till he died'. Where a certificate under section 87 could not be issued against a trustee due to his having been a trustee till his lifetime, no such certificate could be issued against an alienee of the trust property from such a trustee. The statutory requirements of section 87 of the Act will not be satisfied in such cases and the Deputy Commissioner will have no Jurisdiction to grant a certificate.

S. K. Ahmed Meeran and *K. Hariharan*, for Appellant.

The Additional Government Pleader (*M. M. Ismail*), *T. M. Chinnayya Pillai* and *T. S. Palanisivagurunathan*, for Respondents.

R.M. ——— *Rule absolute.*

Ramachandra Iyer, J.
29th April, 1960.

Workers of Textile Mills, Coimbatore *v.* Management of Mills.
W. P. No. 735 of 1957.

Industrial Disputes Act (*XIV of* 1947), *section* 2 (*b*)—*Award—Meaning of—Compromise entered into between certain workers and managements recorded by Tribunal—If an award.*

Industrial Disputes (*Amendment Act* (*XXXVI of* 1956)—*Effect of—Old tribunal under the Act abolished—Dispute referred back—If could be dealt with by the new tribunal under the Amendment Act.*

Section 2 (*b*) of the Industrial Disputes Act, 1947 defines an 'award' as meaning an interim or final determination of an industrial dispute. Such a determination should be a judicial one in which the tribunal exercises its own judgment. Though a tribunal under the Act might take note of a compromise entered into between the workers and management in any dispute before it, the compromise should be adopted as its own determination of the dispute in order to make it an award of that tribunal. An Industrial Tribunal under the Act has no power merely to record a comprimise like the civil Courts under Order 23, rule 3 of Civil Procedure Code. Such a recording cannot by itself amount to a determination as such, of the question referred to it. Having regard to the nature and scope of an industrial dispute and an award under the Act, which would affect parties other than those actually appearing before the tribunal, a compromise by a few cannot amount to a settlement of the dispute. It is therefore necessary that the tribunal should either make its own award or adopt a cmpromise as its award after considering whether it is proper in the interests of all workmen concerned in the dispute. For this purpose the tribunal should give an opportunity to the concerned parties to show that the compromise could not be adopted.

On a fair construction of the various provisions of the Industrial Disputes Act, as amended by Act XXXVI of 1956, industrial disputes referred to for determination by the tribunals under the Act before the amending Act of 1956, could be decided by the appropriate Tribunal constituted under sections 7, 7-A or 7-B of the amended Act as the case may be.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *M. R. Narayanaswami* and *B. Lakshminarayana Reddy*, for Respondents.

R.M. —— *Orders accordingly.*

Jagadisan, J.
29th April, 1960.

Krishnamurthi *v.* Vijayaraghavachariar.
C. R. P. No. 965 of 1959.

Practice—Suit for dissolution of partnership and for accounts—Evidentiary value of the account books kept by the partnership.

Partnership Act (IX of 1932), *sections* 9 *and* 12 (*d*)*—Suit for dissolution of partnership and for accounts—Value of account books kept by the partnership.*

Under the Partnership Act every partner has a statutory right to inspect the books of accounts of the firm, to scrutinise the entries made therein and thereby inform himself of the progress of the business of the firm. When the account books of the partnership firm is produced by a partner as being those maintained in the regular course of business they are *prima facie* evidence against each of them and also for any of them against the others. But the presumption about their genuineness is a rebuttable one and if any of the partners seeks to surcharge or falsify the accounts it is open to him to prove the same by evidence. The Court might however give special directions in regard to the accounts under Order 20, rule 17, Civil Procedure Code.

D. Ramaswami Ayyangar, for Petitioner.

The Advocate General (*V. K. Tiruvenkatachari*), *R. Viswanathan* and *C. Rangaswami Ayyangar*, for Respondent.

R.M. —— *Petition dismissed.*

Ramachandra Iyer, J.
4th May, 1960.

Janaki Ammal *v.* Rangaswami
C. R. P. No. 1606 of 1959.

Madras Court-fees and Suits Valuation Act (XIV of 1955), *sections* 12 *and* 18*—Decision on Court-fee—When could be reviewed—Scope and extent of power.*

Ordinarily there are three stages at which a Court can enquire into the question whether a plaint or appeal has been properly valued. They are : (*a*) Before the registration of the plaint or appeal. In such cases it will be open to the Court to review, correct and further review its decision in the manner specified in section 12 (1) of the Act. (*b*) After the suit or appeal has been registered an issue on the question of Court-fee can be raised by the defendant or respondent and the Court should decide the matter. In such cases the decision will be binding on the Court that rendered it unless a fresh decision is asked for by the Court-fee Examiner. (*c*) On the objection of Court-fee Examiners under section 18 of the Act, when a decision has been given on the report of the Court-fee Examiner no further review or reconsideration is possible except by an appellate Court under section 12 (4) of the Act. A decision given under section 18 (2) of the Madras Court-fees and Suits Valuation Act, 1955, will be final so far as that Court is concerned. In the absence of a statutory provision expressly enabling the Court to review its decision, a decision on the question of Court-fee once given will be binding on the Court which gave the decision, at all subsequent stages.

S. V. Venugopalachari, for Petitioner.

The Government Pleader, for Respondent.

R.M. *Petition allowed.*

Rajagopalan and Ramachandra Iyer, JJ.
6th May, 1960.

Rajagopala Chettiar *v.* Sina Ana Sheikh Rowther.
S. T. A. No. 4 of 1957.

Madras Agriculturists Relief Act (*IV of* 1938), *section* 9-A *and Madras Estates Land* (*Abolition and Conversion into Ryotwari*) *Act* (*XXVI of* 1948)—*Applicability of scaling down provisions of the former Act to compensation amount deposited with the tribunal under the latter Act.*

Section 9-A of the Madras Agricultursts Relief Act, 1938, would apply only to a case where the mortgagor seeks to redeem the mortgage. A right of redemption is an incident to a subsisting mortgage and could exist only so long as the mortgage on the property remains. In a case where the mortgage property had been taken over by the Government under the Madras Estates Land (Abolition and Conversion into Ryotwari) Act, 1948, no question of redemption of the mortgage property could arise. Therefore where an erstwhile mortgagor applies for payment out of the compensation amount after making provision for payment to the mortgagee of the estate, no case of redemption can arise and section 9-A of the Madras Agriculturists Relief Act could not be applied and the debt cannot be scaled down.

K. Parasaran, for Appellant.

T. R. Srinivasan, for Respondent.

R.M. *Appeal allowed.*

Anantanarayanan, J.
7th May, 1960.

Govindaraja Iyengar *v.* Petha Ponnan.
A. A. O. No. 10 of 1959.

Judicial Officers Protection Act (*XVIII of* 1850), *section* 1—*Scope of.*

The immunity given by section 1 of the Judicial Officers' Protection Act, 1850, to Judicial Officers against being sued in respect of acts done by them in their capacity as such officers is no doubt absolute. But that does not imply that higher agencies in administrative control of the Judicial Officers or Court concerned, may not take cognisance of their conduct and deal with him. It is only the party that is prevented from seeking redress through Court by canvassing tne motive of the Judicial Officer who acts in his judicial capacity.

D. Ramaswami Ayyangar and *P. R. Varadarajan*, for Appellant.

M. Srinivasagopalan, for Respondent.

R.M. *Appeal allowed.*

Balakrishna Ayyar, J.
30th June, 1960.

Lokambal Achi *v.* Srinivasa Pillai.
A.A.A. O. No. 51 of 1959.

Civil Procedure Code (*V of* 1908), *section* 144—*Restitution—Principle of—Money deposited in Court in pursuance of decree—Decree reversed on appeal—Basis of restitution.*

Where money is deposited into Court or is paid over to the decree-holder in pursuance of a decree and that decree is reversed or altered in appeal, the principle of restitution requires that the judgment-debtor should be placed in the position which he would have occupied if the original decree had not been passed, *i.e.*, the loss occasioned to him by being deprived of the use of the money whch he paid over to the decree-holder or deposited into Court. This will be the interest on the money deposited or paid over by him. But where the deposit in Court has been made subject to conditions which the decree-holder may be unable or unwilling to comply with, then he would not be liable to pay any interest by way of restitution.

T. Munuswami Reddi, for Appellant.

J. R. Gundappa Rao, for Respondent.

R.M. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
12th August, 1960.

State of Madras *v.*
Noor Mohd. & Co.
C. A. No. 38 of 1959.

Madras General Sales Tax Act (IX of 1939), *sections* 3 *and* 5, *clause* (vi)—*Rule* 16 (5) *of the Turnover and Assessment Rules*, 1939—*Article* 14 *of the Constitution—Unlicenced dealer.*

A dealer in Madras State could not claim exemption from payment of sales tax on the turnover of skins and hides unless he had obtained a licence as laid down in the rule. Since the respondent-company had failed to obtain such a licence in respect of the years 1952-53, the Court held that the order of Sales Tax Authority assessing it was legal and proper.

" The general rule is taxation at multiple points on the total turnover of the dealer, but in the case of certain specified articles a departure has been made and tax at a single point is leviable provided certain conditions and restrictions as to licence which are envisaged in section 5 and laid down in rule are complied with. Rule 16 (5) of the Turnover and Assessment Rules is not *ultra vires*."

R. Ganapathi Ayyar, for the Appellant.

C. K. Daphtary, Solicitor-General of India, for the Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, A. K. Sarkar, K. N. Wanchoo and J. C. Shah, JJ.
16th August, 1960.

Director of Rationing and Distribution *v.* Corporation of Calcutta.
Cr. A. No. 158 of 1956.

Calcutta Municipal Act, section 386—*Immunity of Government from liability for certain offences and under certain statutes—' King can do no wrong'—Applicability.*

" The immunity of the Government from the operation of certain statutes, and particularly statutes creating offences, is based upon the fundamental concept that the Government, or its officers, cannot be a party to committing a crime analogous to the ' prerogative of perfection ' that the ' King can do no wrong.' Under the Constitution, all laws in force before the commencement of the Constitution " shall continue in force." The phrase " laws in force" meant not only statutory law, but also custom or uasage having the force of law and as such " includes the Common Law of England, which was adopted as the law of this country before the Constitution came into force." Under the Common Law the King was not bound by a statute unless " he is expressly named or is bound by necessary inplications." The sovereign Government of the State had not been expressly included within the ambit of the statute, nor was there any indication to include it within the purview of the Act by necessary implications. In the absence of any indication to the contrary, apparently this department of the Government was discharging the elementary duty of a sovereign to ensure proper and equitable distribution of available foodstuffs with a view to maintaining peace and good Government."

S. M. Bose, Advocate-General, West Bengal, for the Appellant.

N. C. Chatterjee, for the Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah and J. C. Shah, JJ.
17th August, 1960.

Zoraster Co. *v.* Commissiner of Income-tax.
C. A. No. 30 of 1958.

Income-tax Act (*XI of* 1922), *section* 64 (4)—*Jurisdiction of the High Court.*

If the Tribunal has to make a fresh enquiry leading to the admission of fresh evidence on the record, then this direction offends against the ruling of this Court in the case of *Jehangir Vakil Mills*, (1960) 1 S.C.R. 249. If however the direction be interpreted to mean that the Tribunal in giving the finding must confine itself to the facts admitted and or found by it then direction cannot be described as in excess of the jurisdiction of the High Court. It would have been better if the High Court had given directions confined to the record of the case before the Tribunal ; but in the absence of any thing expressly to the contrary, we cannot hold that the directions would lead inevitably to the admitting of fresh evidence. This at least now cannot be done, since the *Jehangir Vakil Mills case* has prohibited the admission of fresh evidence. In our opinion the present case does not fall within the rule in the *Jehangir Vakil Mills case* and is distinguishable.

Gopal Singh, for the Appellant.

K. N. Rajagopala Shastri, for the Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, Das Gupta, J. C. Shah and N. Rajagopala Ayyangar, JJ.
18th August, 1960.

State of Rajasthan *v.* Th. Pratap Singh.
C. A. No. 231 of 1956.

Police Act (*V of* 1861), *section* 15—*Constitution of India*, 1950, *Article* 15—*Scope.*

It would be seen that it is not the case of the State even at the stage of the petition before the High Court that there were no persons belonging to the other communities who were peace loving and law abiding though it might very well be that according to the State a great majority of each of these other communities were inclined the other way. If so it follows that the notification has discriminated against the law abiding members of the other communities and in favour of the Muslims and Harijan communities (assuming that every one of them was peace loving and law abiding) on the basis only of caste or religion. If there were other grounds they ought to have been stated in the notification. It is plain that the notification is directly contrary to the terms of Article 15 (1) and that paragraph 4 of the notification has incurred condemnation as violating a specific constitutional provision. In our opinion the learned Judges of the High Court were clearly right in striking down this paragraph of the notification.

M. S. K. Shastri, for the Appellant.

Nemo, for the Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
23rd August, 1960.

R. L. Toshiniwal *v.* S. R. Alsi.
C. A. No. 167 of 1955.

Transfer of Property Act (*IV of* 1882), *section* 54—*Registration Act* (*XVI of* 1908), *sections* 17 *and* 40—*Right of pre-emption.*

The right of pre-emption being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being susbtituted in his place.

"There are no equities in favour of pre-emptor whose sole object is to disturb a valid transaction by virtue of the rights created in him by statute. To defeat the law of pre-emption by any legitimate means is not fraud on the part of either the vendor or the vendee and a person is entitled to steer clear of the law by all lawful means". "The right of pre-emption is a weak right and is not looked upon with favour by Courts and therefore the Courts could not go out of their way to help the pre-emptor."

A.I.R. 1939 Hag. 35; I.L.R. 16 Allahabad 34; L.R. 28 I.A. 46; L.R. 48 I.A. 475; I.L.R. 35 Cal. 575; I.L.R. 7 All. 482, considered.

1959 S.C.R. 878: 1958 S.C.J. 1234, followed.

S. N. Khardekar and *A. G. Ratnaparkhi*, for the Appellant.

N. C. Chatterji, *S. A. Sohoni* and *Ganpat Rai*, for Respondent No. 1.

G.R. — *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, A. K. Sarkar, K. Subba Rao and J. C. Shah, JJ.
23rd August, 1960.

Universal Imports Agency *v.* Chief Controller of Imports and Exports.
Writ Petitions Nos. 123-125 of 1957. and 118 of 1959.

Words and phrases—"Things done"—Notification by the Chief Controllar of Imports and Exports, Pondicherry—Interpretation of words "things done"—Includes consequences flowing therefrom.

The notification enforcing the Indian laws in Pondicherry had provided that all laws "in force in the French Establishment immediately before the commencement of the Order shall cease to have effect, save in respect of "things done" or omitted to be done before such commencement.

The words "things done," when reasonably interpreted, would mean not only "things done", but also the legal consequences flowing therefrom. It was held that the bringing of the goods into India on the basis of the relevant contracts entered into by the petitioners "form part of the same transaction. . . the imports were the effect or the legal consequences of the "things done", *i.e.*, the contracts entered into by the petitioners with the foreign dealers.

N. C. Chatterjee, for the Petitioners.

H. J. Umrigar, for the Respondents.

G.R. — *Petitions allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao, K. N. Wanchoo, JJ.
23rd August, 1960.

Associated Hotels of India, Ltd. *v.* R. B. Jodhamal Kuthalia.
C.A. No. 320 of 1958.

Indian Independence (Legal Proceedings) Order, 1947, *section* 4 (3)*—Decree passed by the Fedral Court of Pakistan—Executability in India.*

Decree of the Fedral Court of Pakistan, dated 21st December, 1953, cannot be executed in India as a result of the provisions of section 4 (3) of the Indian independence (Legal Proceedings) Order, 1947, as if it had been passed by the Supreme Court of India. The jurisdiction of the trial Court at Lahore was not affected in any way by the Independence Act and the present suit (which resulted in the decree), did not fall within section 4 (1).

D. N. Pritt, for the Appellant.

C. K. Daphtary, Solicitor-General of India, for the Respondent No. 1.

A. V. Viswanatha Shastri, for Respondent No. 2.

G.R. — *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
25*th August*, 1960.

Vasantlal Maganbhai Sanjanwala *v.* State of Bombay.
C.A. Nos. 147-148 of 1955.

Bombay Tenancy Act and Agricultural Lands Act before amendment in 1956—*Delegation of power.*

By Majority.—Under the Tenancy Act and Agricultural Lands Act before the amendment in 1956 the delegation to the Government of the power to fix a lower rent than the maximum payable in any particular area was not unconstitutional.

" Delegation is a constituent element of the legislative power as a whole. The extent to which such delegation is permissible was now well-settled, and before such delegation is made the Legislature must lay down the policy and principle and must afford guidance for carrying out the said policy.

In our opinion therefore, having regard to the legislative policy laid down by the Act in its preamble and in the other relevant sections to which we have referred and having regard to guidance which has been provided for fixing a reasonable rent under section 12 (3), it would not be possible to hold that the power delegated to the Provincial Government by section 6 (2) suffers from infirmity to exercise delegation ".

V. M. Limaye, for the Appellant.

H. N. Sanyal, Additional Solicitor-General of India, for the Respondent.

G.R. —— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
31*st August*, 1960.

Mineral Development Ltd. *v.* Union of India.
C.A. No. 231 of 1958.

Mines and Minerals Regulation and Development Act (*LIII of* 1948), *section* 3 (d)—*Mineral Concession Rules as amended in* 1954—" *Mining lease* "—*If includes sub-lease.*

" We see nothing in the Mines and Minerals Regulation and Development Act to indicate that the term ' mining lease ' as defined in section 3 (*d*) does not include a mining sub-lease. On the other hand, looking to the purpose and object with which the Act was passed, it seems to us quite clear that a sub-lease must be included within the term mining lease as it obviously is within the plain words of section 3 (*d*). We therefore hold that a mining sub-lease after the coming into force of the Act and Rules is included in the term ' mining lease ' as defined in section 3 (*d*) and is subject to the Act and Rules."

N. C. Chatterjee, Sanjiv Kumar Chaudhary and *Ganpat Rai*, for the Appellant.

M. C. Setalvad, Attorney-General of India and *T. M. Sen*, for the Respondent No. 1.

Lall Narain Sinha with *R. C. Prasad*, for the Respondent No. 2.

G.R. —— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta and J. C. Shah, JJ.
31*st August*, 1960.

Raja Narayan Lal Bansi Lal *v.* Maneck P. Mistry.
C.A. No. 268 of 1959.

Companies Act (*VII of* 1913), *sections* 137, 138 *and* 140, *Companies Act* (*I of* 1956), *sections* 239, 240, 645 *and* 646—*Constitution of India* (1950), *Articles* 14 *and* 20.

Provisions in the old enactment (Companies Act, 1913) enabling the Central Government to appoint Inspectors were similar to such provisions in the new Act (Companies Act, 1956). Section 646 of the new Act kept alive the appointment of the Inspectors made under the old Act.

Considering the provisions of Article 20 (3) of the Constitution the right under it could be availed of only if the pending proceedings " are of a criminal nature" and are instituted or continued before a Court of Law. The investigation carried on by Inspectors was no more than a fact finding commission.

Sections 239 and 240 of the Companies Act, 1956, are not discriminatory and do not offend Article 14 of the Constitution as it cannot be said that the protection afforded to witnesses under section 132 of the Indian Evidence Act and to accused persons under section 161 (1), and (2) of the Criminal Procedure Code is denied to persons in charge of management of Public Companies as they are a separate class by themselves as distinct from other citizens. If they abuse their position and indulge in irregularities it raises problems very different from ordinary breaches of trust and checks and safeguards may be necessary to guard against a possible abuse of power.

" There can be no doubt that one of the objects of the Companies Act is to throw open to all citizens the previlege of carrying on business with limited liability. Where financial interests of a large number of citizens are left in charge of persons who manage affairs of the companies it would be legitimate to treat such companies and their managers as a class by themselves." Viewed from this angle, " there would be no difficulty in holding that either section 239 or section 240 is not violative Article 14 of the Constitution."

Cases relied upon : (1953) S.C.J. 456 : (1953) 2 M.L.J. 113 : 1953 S.C.R. 730; (1954) S.C.J. 428 : (1954) 1 M.L.J. 680 : 1954 S.C.R. 1077 and 1150; 1959 S.C.J. 147 and 699 and 1950 S.C.J. 726.

Cases considered : 69 Law. Ed. 158 ; 35 Law. Ed. 1110 ; 39 Law. Ed. 746 at 752; L.R. (1912) 2 K.B. 251; L.R. (1932) A.C. 392.

A. V. Viswanatha Shastri, Ganpat Rai and *I. N. Shroff*, for the Appellant.

M. C. Setalvad, Attorney-General of India and *T. M. Sen*, for the Respondent.

G.R. *Appeal dismissed.*

[Supreme Court.]

B. P. Sinha, C.J., S.J. Imam, A. K. Sarkar, K. Subba Rao and J. C. Shah, JJ.
2nd September, 1960.

Baldev Singh *v.* Commissioner of Income-tax.
C. A. No. 317 of 1955.

Income-tax Act (XI of 1922), *sections* 23 *and* 34—*Vires*—*Entry* 54 *of List I of the Government of India Act,* 1935.

The appellant could be properly assessed by the Income-tax Officer, Delhi, under section 64 (2) because at the time of the assessment he was working at Delhi as the Defence Minsiter. The Court said that section 34 of the Income-tax Act was applicable to the merits of the case. It was held that the income involved in the proceedings " actually existed " on the relevant date and therefore shall be deemed " to have escaped assessment."

Section 23-A was enacted for preventing evasion of tax and the Court said that when the management of a company decides not to declare a dividend despite money being available it does so because it does not want to take the dividend.

" By providing that in the circumstances mentioned in it, the available assessable income of a company would be deemed to have been distributed as dividend and be taxable in the hands of the shareholders as income received by them, the section would prevent the members of such a group from evading, by the exercise of their controlling power over the company, payment of tax on income that would have come to them. That being so, the section would be within Entry 54 of List I of the Government of India Act, 1935."

Considerations of hardship are irrelevant for deciding questions of legislative competence. The section creates a fictional income arising as on a specified date in the past and it does so for the purpose of that income being included in the income of the shareholders for assessment of their income-tax.

A. V. Viswanatha Shastri, Senior Advocate, (*S. C. Mazumdar*, with him), for the Appellant.

C. K. Daphtary, Solicitor-General of India (*D. Gupta* with him), for the Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, K. C. Das Gupta, J. C. Shah and N. Rajagopala Ayyangar, JJ.
2nd September, 1960.

Bhopal Sugar Industries, Ltd. v. Income-tax Officer, Bhopal.
C.A. No. 407 of 1956.

Income-tax Act (XI of 1922)—Jurisdiction of the Judicial Commissioner, Bhopal, in setting aside the order and directions of the Appellate Tribunal to the Income-tax Officer under the Tribunal.

"The Judicial Commissioner was clearly in error in holding that no manifest injustice resulted from the action of the respondent in not carrying out the directions of the Tribunal. The refusal of the Income-tax Officer in effect was a denial of justice and destructive of one of the basic principles in the administration of justice based as it was in this country on a heirarchy of Courts".

Sanat P. Mehta, with *Rajinder Narain & Co.*, for the Appellant.

K. N. Rajagopala Sastri, Senior Advocate (*D. Gupta*, with him) for the Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
5th September, 1960.

K. M. Nanawati *v.* The State of Bombay.
Crl. M. P. No. 320 of 1960.

Supreme Court Rules, Order 21, *rule* 5—*Constitution of India* (1950), *Articles* 142, 145 *and* 161—*Criminal Procedure Code* (*V of* 1898), *sections* 401 *and* 426—*Power of Governor to suspend sentence—Limits.*

By Majority :

"It is significant that the Governor's power has been exercised in the present case by reference to the appeal which the petitioner intended to file in this Court. On the principle of harmonious construction and to avoid a conflict between the two powers, it must be held that Article 161 does not deal with the suspension of sentence during the time Article 142 is in operation and the matter is subjudice in this Court.

It was further held that the Governor could always grant full pardon at any time and even during the pendency of the case in the Supreme Court "in exercise of what is ordinarily called mercy jurisdiction." Such a pardon it was held, would completely absolve the person concerned from all punishment or disqualification attaching to a conviction for a criminal offence. This power was held to be vested exclusively in the head of the executive, "because the judiciary has no such mercy jurisdiction. But the suspension of the sentence for the period when this Court is seized of the case could have been granted by this Court itself. If in respect of the same period the Governor also has power to suspend the sentence, it would be functioning in the same filed."

So long as the judiciary had the power to pass the particular order in a pending case, "to that extent the power of the executive is limited in view of the words of section 401 and 426 of the Code of Criminal Procedure and Article 142 of the Constitution."

The Rules made by the Supreme Court though made under Article 145 of the Constitution are not mere subordinate legislation as the source of the power of this Court to make rules is derived from Article 142 of the Constitution.

J. B. Dadachandji, for the Petitioner.

H. M. Sanyal, Additional Solicitor-General for India, for the Attorney-General of India.

H. M. Seervai, Advocate-General of Bombay, for the Respondent.

C. B. Agarwala, Senior Advocate, *Amicus curiae*.

G.R. — *Application dismissed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, K. C. Das Gupta, J. C. Shah and N. Rajagopala Ayyangar, JJ.
7th September, 1960.

Smt. Shanno Devi *v.* Dr. Mangal Sen.
C. A. No. 247 of 1960.

Constitution of India (1950), *Article* 6—*Interpretation of phrases—Migrated to the territory of India—' Ordinary residence.'*

'Migrated to the territory of India ' could only mean that the person migrating to India had come to the territory of India with intention to reside in India permanently. There was nothing on record to justify interference with the High Court's finding that " after August, 15, 1947, Mangal Sen shifted to Jullundur from a place in Pakistan and made up his mind to make India his permanent home ". It was further held that " whether or not in January, 1950, he changed that intention " was irrelevant.

" It is not necessary that for every day of this period he should have resided in India. In the absence of the definition of the words, ' ordinarily resident' in the Constitution it is reasonable to take the words to mean ' resident during this period without any serious break '. The materials on the record leave no doubt that there was no break worth the name in Mangal Sen's residence in the territory of India from at least 15th August, 1947 till 26th November, 1949."

A. V. Viswanatha Shastri and *N. Lall*, for the Appellant.

U. M. Trivedi and *Ganpat Rai*, for the Respondent.

G.R. — *Appeal dismissed.*

Ramachandra Iyer, J.
24th June, 1960.

Madura Mills Co., Ltd. *v.* Venkataswami.
W. P. No. 960 of 1958.

Industrial Disputes Act (XIV of 1947), *section* 33-*C* (2)—*Benefits—If confined only to non-monetary benefits.*

Having regard to the scheme and object of section 33-C of the Industrial Disputes Act, 1947, the expression ' benefits' in sub-section (2) cannot be confined to non-monetary benefits alone declared under a settlement or award but could include cases of benefits granted in terms of money. The jurisdiction of the Labour Court under section 33-C to investigate and compute the benefits which the workmen are entitled to will therefore extend not only to benefits that are not expressed in terms of money, but also benefits so expressed.

Messrs. King and *Partridge*, for Pettitioner.

B. Lakshminarayana Reddy, for Respondent.

R.M. — *Petition dismissed.*

Rajamannar, C.J., and Veeraswami, J.
30th June, 1960.

Venkatesa Kotadia *v.* Shanta Bai.
C.C.C.A. No. 58 of 1957.

Civil Procedure Code (*V of* 1908), *section* 65 *and Order* 21, *rules* 92 *and* 94—*Confirmation of sale held in execution of decree—Effect of—Necessity for—Power and duty of Court—Continued subsistence of decree—If necessary.*

As contrasted with the provisions of section 316 of the old Civil Procedure Code of 1882, under the corresponding provisions of section 65 and Order 21, rule 94 of the present Code, the property sold in execution of a decree becomes vested in the purchaser on the date of the sale, though such vesting becomes effective when the sale is confirmed. But having regard to the fact that the vesting is on the date of the sale and the continued subsistence of the decree is no longer a condition prece-

dent to the issue of a sale certificate under Order 21, rule 94, confirmation of sale under rule 92 is no long conditional upon the existence, on the date of confirmation, of an outstanding decree in execution of which the sale had taken place. More over rule 92 of Order 21 is imperative and the Court is bound to confirm a sale unless it is set aside under the provisions of rules 89 to 91 of Order 21. Cases of fraud, restitution, etc., may however stand on a different footing and different considerations may apply in particular circumstances where the decree-holder himself is the purchaser.

(1941) I M.L.J. 193, followed.

Hence an execution sale in favour of a stranger auction-purchaser has got to be confirmed under Order 21, rule 92, Civil Procedure Code, notwithstanding the fact that the decree in execution of which the sale took place, had, before its confirmation, been modified on appeal with the result that on the date of sale the decree remained over-paid and nothing was due under the same.

C. R. Rajagopalachari and *B. T. Sampath*, for Appellant.

T. R. Srinivasa Ayyangar, for Respondent.

R.M. ——— *Appeal allowed.*

Ananthanarayanan, J. Public Prosecutor *v.* Sengammal.
26th July, 1960. Crl. Appeal No. 539 of 1959.

Prevention of Food Adulteration Act (XXXVII of 1954), *section* 16 (1) (g) (1)—*Butter as defined in the Rules—If includes butter obtained from goats milk.*

'Butter' as defined in the rules framed under the Prevention of Food Adulteration Act, 1954, means the product prepared from the milk or cream of cow or buffalo or both. Hence even if there is some admixture of butter prepared from goat's milk with other butter, such stuff will not fall within the definition of butter as defined by the rules and the sale of such stuff would not be a punishable offence under the Act.

The Public Prosecutor (*P. S. Kailasam*) for Appellant.

V. Venkatesam and *C. F. Louis*, for Respondent.

R.M. ——— *Appeal dismissed.*

Ramachandra Iyer, J. Ramaswamy Papiah *v.* Ellappa Gounder.
22nd August, 1960. C.R.P. No. 936 of 1960.

Madras Cultivating Tenants Protection Act (XXV of 1955), *section* 3 (3) (a)—*Revenue Divisional Officer acting under—If could grant an injuction pending proceedings initiated under the Act.*

An injunction, which is a preventive remedy, is granted by Courts under the specific provisions of the Civil Procedure Code. There is no inherent power in any Tribunal to grant an injunction unless the jurisdiction to grant it is expressly conferred by statute and such a power cannot be assumed by implication.

Having regard to the scheme of the Madras Cultivating Tenants Protection Act, 1955 and the Rules framed thereunder, the Code of Civil Procedure does not wholly apply to the Revenue Courts acting under the Act. The Revenue Courts have jurisdiction to decide certain specific matters in respect of limited classes of cases. Though certain provisions of the Civil Procedure Code are made applicable to the proceedings before a Revenue Court under the Act, there is no provision in the Act enabling the Revenue Courts to grant injunctions. The provisions of Order 39 of the Civil Procedure Code would not apply to cases under the Madras Cultivating Tenants' Protection Act. Hence a Revenue Divisional Officer would have no jurisdiction to grant an injunction restraining a landlord from entering his property. The tenant has always got his remdy in such cases to approach the civil Courts for relief by way of injunction.

R. Sundaravaradan, for Petitioner.

S. Varadarajulu Naidu and *V. Srinivasan*, for Respondent.

R.M. ——— *Petition allowed.*

[SUPREME COURT.]

B. P. Sinha, C. J., J. L. Kapur, P.B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
8th September, 1960.

B. V. Patankar *v.* G. C. Sastri.
C.A. No. 302 of 1955.

Mysore Rent Control Order, 1945 *and* 1948, *sections* 8 (1), 9 (1), (2) *and* 46—*Waiver and estoppel—Section* 47, 144, *and* 151, *Civil Procedure Code* (*V of* 1908).

"The argument of waiver and estoppel is also devoid of force. This plea was based on a letter which the respondents' lawyer sent in reply to the respondent asking to make arrangements to put the appellants in possession. The former's reply thereto was that his client was making arrangement and as soon as he could do so he will hand over the possession to the appellants. This is a slender basis for the sustainability of the plea of waiver and estoppel. There is no conduct on the part of the respondent which has induced the appellants to change their position or has in any way affected their rights and the plea of non-executability which has been taken is based on statutes; and against statute, there cannot be an estoppel, This ground taken by the appellant is equally unsound and must be rejected.

The contention raised that ignoring sections 9 (1) and 16 of the 1948 Mysore House Rent Control Order is no more than an error in the exercise of jurisdiction does not appear to be sound because those sections are a fetter on the executability of the decree and not purely an error in the exercise of the jurisdiction. In the present case the two sections mentioned above were a restriction on the power of the Court to execute the decree and therefore this arguments must also be rejected.

S.A. Gopalrao, for Appellants.

Mirle N. Lakshminaranappa, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao, and K. N. Wanchoo, JJ.
8th September, 1960.

Andhra & Maharashtra Transport *v.* State of Andhra Pradesh.
W.P. Nos. 72, 76, 87, & 93 to 104, 217 to 233 all of 1960.

Motor Vehicles Act (*IV of* 1939), *Chapter IV-A, section* 68-*C—Vires and validity of.*

The impugned provisions of Chapter IV-A, section 68-C of the Motor Vehicles Act were not violative of the petitioners' fundamental rights of property. These provisions were a reasonable classification and restrictions on the petitioners' rights.

"State can always provide more well equipped buses, give better amenities to the travelling public, keep regular timings, repair or replace damaged buses in emergencies." When the legislature makes a classification in the context of things between a State transport undertaking and others, "we cannot say that there is no reasonable basis for such a classification. The legislature made a sincere attempt to protect, as far as possible, individual rights from the arbitrary acts of the executive."

Chapter IV-A having been held to be constitutionally valid, the "procedure laid down for implementing it cannot, in our view, be said to be unreasonable." The note relating to the frequency of the services appended to the schemes however was void and must be deleted.

A. V. V. Shastri, for Petitioners.

The Advocate-General, Andhra Pradesh (*D. Narasaraju*), for Respondents.

T. M. Sen, for State of Maharashtra.

G.R. ——— *Petitions dismissed.*

M—NRC

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, K. C. Das Gupta, J. C. Shah and N. Rajagopala Ayyangar, JJ. *8th September*, 1960.

State of Orissa. *v.* Ramnarayandas. C.A. No. 61 of 1959.

Constitution of India (1950), *Article* 311 (2)—*Scope—Probationer—Order discharging —If dismissal.*

"The inquiry against the respondent was for ascertaining whether he was fit to be confirmed. An order discharging a public servant, even if a probationer, in an inquiry on charges of misconduct, negligence, inefficiency or other disqualification, may appropriately be regarded as one by way of punishment, but an order discharging a probationer following upon an inquiry to ascertain whether he should be confirmed, is not of that nature."

"We have carefully considered the evidence and the authorities to which our attention has been invited and we are definitely of opinion that the High Court was in error in holding that the order discharging the respondent from service amounted to dismissal which attracted the protection of Article 311 (2) of the Constitution."

D. N. Mukharji, for Appellant.

Nemo, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, J. C. Shah and N. Rajagopala Ayyangar, JJ. *13th September*, 1960.

Bullion & Grain Exchange Ltd. *v.* State of Punjab. C.A. No. 123055.

Punjab Forward Contracts Tax Act of 1951—*Void and unconstitutional—Gambling—Test—Entry* 62 *of the State List.*

"When two parties enter into a formal contract for the sale and purchase of goods at a given price and for their delivery at a given time, it may be that they never intend an actual transfer of goods at all but they intended only to pay or receive the difference according as the market price varied from the contract price. When such is the intention it has been held that that is not a commercial taxation but a wager on the rise or fall of the market, which comes within the connotation of "gambling." "But, it is well nigh impossible for any taxing authority to brand a particular forward contract as a wagering contract nor is it to be expected that any party on whom the tax is sought to be levied, will voluntarily disclose that in the particular contract, or in a number of contracts, the intention was not to deliver the goods but only to pay or receive the difference in price." The words "forward contract," as defined in the Act, did not set out all the elements which were necessary to render a contract a wagering contract and so the impugned legislation to tax forward contracts as defined did not come within Entry 62 of the State List.

N. C. Chatterjee, for Appellant.

The Advocate-General, Punjab (*S. N. Sikri*) for Respondent.

G.R. ——— *Appeal allowed.*

Rajamannar, C.J., and Veeraswami, J. *7th May*, 1960.

Khalilur Rahman *v.* Syed Hussain. C.R.P. No. 634 of 1957.

Civil Procedure Code (*V of* 1908), *section* 95—*Scope and applicability—Claim for damages for wrongful attachment before judgment—When could lie.*

It is no doubt true that the setting aside of the order of attachment which is alleged to have been obtained on insufficient grounds is not an essential preliminary to the grant of compensation under section 95 of the Civil Procedure Code. But when an order of attachment so obtained has been made absolute after hearing

the parties, it would mean that according to the Court the application for attachment was made on sufficient grounds and if that order has become final, it will not be open to the same Court on a subsequent application under section 95 of the Civil Procedure Code to hold the contrary. So long as the prior binding order of attachment, which has been allowed to become final, is not set aside either by appeal or review or otherwise, an application under section 95 of the Civil Procedure Code cannot be allowed on the ground that the order has been procured on insufficient grounds. This is really a case of applying the principle of the rule of *res judicata* embodied in the Civil Procedure Code, which may not however in terms apply. But where the order of attachment that has become final is only *ex parte* and there is no final order on the merits and after considering the objections of the defendant then it will not be equitable to apply the above rule.

A.I.R. 1923 Mad. 352, (1943) (1) M.L.J. 732 and 67 M.L.J. 448, Ref.

T. L. Nagaraja Rao, for Petitioner.

M. R. M. Abdul Karim, for Respondent.

R.M. *Appeal dismissed.*

Balakrishna Aiyar, J. Veeraswami Reddy *v.* Kanakammal.
21st June, 1960. C.R.P. No. 709 of 1959.

Limitation Act (IX of 1908), *sections* 9 *and* 13—*Scope of—Mode of computing the period of limitation.*

The proper way of reading sections 9 and 13 of the Limitation Act for purposes of ascertaining whether a suit is in time or not, is to first compute the interval between the date when the cause of action arose and the date when the suit was instituted. From this interval the time during which the defendant has been absent from India could be deducted by virtue of section 13 of the Limitation Act. If the resultant period does not exceed the time specified in column 3 of Schedule I of the Limitation Act the suit would be in time.

I.L.R 6 Bom. 103, dissented from.

I.L.R. 8 Bom. 561 and I.L.R. 4 All. 530, referred.

M. Srinivasachari and *V. Ratnam*, for Petitioner.

R. D. Indrasenan, for Respondent.

R.M. *Petition dismissed.*

Rajagopalan, J. Parasatti Ammal *v.* Kuppuswami Iyengar.
14th July, 1960. W.P. No. 50 of 1960.

Madras Cinemas Regulation Act (IX of 1955) *and Rules framed thereunder—Rule* 101 (1)—*Space all round—Scope of requirement.*

Considering the scheme of Rule 101 (1) of the rules framed under the Madras Cinemas Regulation Act, 1955 and also the object underlying that rule, the requirement of the rule would be satisfied if factually the land around the cinema-shed was vacant, so that if necessity arose people could escape into that vacant land from the shed without any real obstruction. The requirement of vacant space of twenty yards all round a cinema is a measure of safety in times of emergency like fire. The rule itself contemplates that the vacant land may belong to the licensee or to others and there is nothing in the rule which implies that the public should be able to use the land around as of right.

R. Sundaralingam, P. S. Sarangapani Ayyangar and *Kumari Maithrayi Ramadurai*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*) and *K. Parasaran*, for Respondent.

R.M. *Petition dismissed.*

Srinivasan, J.
14th July, 1960.

Kapainthi Rao *v.* Balakrishna Menon.
C.R.P. No. 1093 of 1959.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7-*A* (4)—*Procedure to be followd.*

It is no doubt true that under section 7-A (4) of the Madras Buildings (Lease and Rent Control) Act, 1949, before action is taken under that sub-section it is the duty of the authority concerned to give due notice to the tenant to show sufficient cause why such an order should not be made. But where on an earlier occasion in the proceedings the tenant has been directed to pay the arrears which were overdue and the order was not complied with, it lay upon the tenant, if he desires to avoid an order for taking proceedings under section 7-A (4) of the Act, to appear before the Court and show cause why such an order should not be made.

(1956) 1 M.L.J. (N.R.C.) 33 referred and explained.

Messrs. Pais, Lobo and Alvares, for Petitioner.

K. Srinivasan, K. Shanmugham, P. Viraraghavalu and *P. Venkataswami,* for Respondents.

R.M. —— *Petition dismissed.*

Rajamannar, C.J. and Veeraswami, J.
21st July, 1960.

Varma *v.* Mettur Industries Ltd.
W.A. No. 115 of 1958.

Industrial Disputes—Labour Court or Tribunal—Scope of powers—If could go behind the Standing Orders and terms of contract.

When a dispute between a workman and his employer regarding the termination of his services has developed into an industrial dispute, the matter is no longer confined to the limits of contractual rights of parties. Having regard to the object of adjudication of industrial disputes it is inherent in the nature of things that a labour Court or tribunal should have jurisdiction to investigate and adjudicate upon the larger issues unfettered by considerations of contractual rights between the particular workman and the employer. Whether the dispute arises out of dismissal from service on account of misconduct or termination of service simpliciter under the contract, if such termination is the subject-matter of an industrial dispute referred to for adjudication the tribunal will be well within its jurisdiction to deal with it in order to find out the propriety or otherwise of the order of termination of service irrespective of the fact that such termination was in conformity with the terms of the contract of service.

B. Lakshminarayana Reddy, for Appellant.

Messrs. King and Partridge and The Additional Government Pleader (*M. M. Ismail*), for Respondents.

R.M. —— *Appeal allowed.*

Veeraswami, J.
22nd July, 1960.

Ramiah Nandiar *v.*
Sri Swaminathaswami Devasthanam.
S.A. No. 355 of 1958.

Madras Hindu Religious and Charitable Endowments Act (XIX of 1951), *sections* 29 (1) *and* 93—*Jurisdiction of Commissioner—Jurisdiction of Civil Court to decide—Validity of order.*

The procedure prescribed under section 29 of the Madras Hindu Religious and Charitable Endowments Act, 1951, has to be strictly followed by the Commissioner before according sanction under section 29 (1) of the Act. If the requirements of the Proviso as to notification, etc., is not followed the Commissioner will have no jurisdiction to make an order under sub-section (1).

Where an order has been made in conformity with section 29 (1) of the Act it may not be open to the Civil Court to go into the merits of the order and decide

about its propriety or otherwise. But it will be competent for the civil Court to see whether the power has been exercised in conformity with the provisions of the Act conferring such power. If the requirements of the statutory provisions have not been followed the order will be one without jurisdiction and as such void. The mere fact that an appeal has been provided for to a departmental authority will not bar the jurisdiction of the civil Court to find whether the requisities for the exercise of the jurisdiction have been complied with. Neither sub-section (4) of section 29 nor section 93 of the Act is a bar to the civil Court's jurisdiction to decide whether an order made under section 29 (1) of the Act is in compliance with the requirements of the Proviso to that sub-section.

(1952) 1 M.L.J. 35, followed.

K. S. Desikan and *K. Raman*, for Appellant.

V. Krishnan and *P. Viraragavan*, for Respondents.

R.M. ——— *Appeal allowed.*

Ramachandra Iyer, J.
28th July, 1960.

Subbiah *v.* Champaka.
A.A.O. No. 76 of 1959.

Civil Procedure Code (V of 1908), Order 6, rule 17—Power of Court to allow amendment—Test to decide whether amendment should be allowed—Suit in ejectment—If could be amended into one for redemption of mortgage.

The powers of a Court to allow amendment of pleadings under Order 6, rule 17, Civil Procedure Code, are wide and larger powers are confirmed on Courts to allow amendments except that one distinct cause of action cannot be substituted for another by an amendment. In deciding whether an amendment could be allowed or not the test is not to see whether the suit of one character will be changed into one of another character, but to see whether the cause of action and the subject-matter of the suit would be changed by the amendment. A suit for ejectment and possession can be converted into one for redemption so long as the cause of action for both the reliefs would be the same and the subject-matter of the suit would also be the same, *viz.*, the mortgaged property.

(1955) 1 M.L.J. 5, followed.

K. S. Sankara Ayyar and *N. A. Noor Mohammad*, for Appellant.

P. Ananthakrishna Nair, for Respondent.

R.M. ——— *Appeal dismissed.*

Ramachandra Iyer, J.
28th July, 1960.

Woodbriar Estate by its Management *v*
Workers of Woodbriar Estate.
W.P. No. 457 of 1959.

Industrial Disputes Act (XIV of 1947)—Jurisdiction of tribunal under—Disciplinary action against employees—Scope of interference by tribunal.

It is now well settled that an Industrial Tribunal, while adjudicating on an industrial dispute relating to the dismissal of a workman for misconduct, is only to satisfy itself that the management has come to a decision in a *bona fide* domestic enquiry. Except in cases of want of good faith, victimisation or unfair labour practice, violation of principles of natural justice or perverse or baseless decision, the judgment of the management will not be interfered with.

The Industrial Disputes Act does not prescribe any procedure for the management to follow in a domestic inquiry for investigating misconduct of its employees. The only obligation of a person conducting the enquiry is that he will have to act according to the rules of natural justice. Though perhaps it may be advisable to do so, there is no obligation on the part of the employer conducting the enquiry to record the evidence much less in the language known to the employee. The memorandum of evidence if recorded by the employer, is only intended for his own

cause and he would be at liberty to make such corrections as may be necessary if mistakes are committed. So long as the evidence recorded is not challenged as incorrect or that portions have been fraudulently inserted, the tribunal cannot reject it as not affording proper basis for the action of the management.

N. Govindan and *S. V. Kumaraswami*, for Petitioner.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondent.

R.M. — *Rule absolute.*

Ramachandra Iyer, J.
28th July, 1960.

Jawarilal Jamad *v.*
S.T.A. Tribunal, Madras.
W. P. No. 699 of 1958.

Motor Vehicles Act (IV of 1939), *section* 64—*Power of State Transport Appellate Tribunal to remand—Scope of.*

The State Transport Appellate Tribunal under the Motor Vehicles Act, cannot set aside an order of the State Transport Authority merely in the hope that some more or better materials than those existing on record would be forthcoming. The power of remand of the Appellate Tribunal is incidental to and consequent upon its setting aside the order under appeal. Unless an order of the State Transport Authority is held to be wrong and is set aside the Appellate Tribunal will have no jurisdiction to remand the case. Before there can be a valid remand of an appeal the State Transport Appellate Tribunal should first be satisfied that the Appellants' claims are superior to those of the person who has been granted the permit.

The Advocate-General (*V. K. Tiruvenkatachari*), *N. G. Krishna Ayyangar* and *V. Srinivasan*, for Petitioners.

The Additional Government Pleader (*M. M. Ismail*), *T. Chengalvaroyan*, *C. S. Prakasa Rao*, *P. Jayachandra Naidu* and *S. Mahadevan*, for Respondents.

R.M. — *Rule absolute.*

Rajamannar, C.J.
29th July, 1960.

Accommodation Controller, Madras *v.*
Natwarlal Davey.
C.R.P. No. 1090 of 1960.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 3 (5)—*Scope of—Rent agreed upon if parties could apply for fixation of fair rent.*

It may be that ordinarily ' rent ' will be one of the terms of tenancy agreed upon between the landlord and the State Government in respect of buildings taken over under section 3 (5) of the Madras Buildings (Lease and Rent) Control Act, 1949. But that does not mean that when once the landlord has agreed to a certain rent he is prevented from having recourse to an application for fixation of the fair rent. The First proviso to section 3 (5) of the Act takes out the question of rent from the operation of the main sub-section. The position under the sub-section is that where fair rent has been fixed for the building under the povisions of the Act then that is the only rent which is payable even if the State Government is the tenant. If no fair rent has been fixed it is open to the landlord to stipulate a rent and *per se* there is nothing invalid. But it is always open to the landlord and the tenant to file an application for fixation of fair rent before the appropriate forum.

(The appropriate forum in cases of requisitioned buildings pointed out. Lacuna in the Act (*viz.*) lack of provision for appeal against the orders fixing fair rent under the sub-section pointed out).

The Government Pleader, for Petitioner.

R.M. — *Petition dismissed.*

Ramachandra Iyer, J.
3rd August, 1960.

Aruna Metal Industries *v.* The Labour Commissioner, Madras.
W.P. No. 554 of 1958.

Industrial Disputes Act (XIV of 1947), *section* 10—*Jurisdiction of Labour Court to set aside an order of discharge of a worker—Grounds for.*

Where the management discharges a worker from service under a basic error regarding his age, it is open to the Labour Court inquiring into the industrial dispute to direct reinstatement of the worker even though there were no *mala fides* on the part of the management. A Labour Court could direct reinstatement if the employer's action is vitiated by a basic error or otherwise contrary to the rule of natural justice.

V. Balasubramanian, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *S. Mohankumaramangalam* and *K. V. Sankaran*, for Respondents.

R.M. —————— *Petition dismissed.*

Ramachandra Iyer, J.
8th August, 1960.

Gomathinayakan *v.* Srivilliputtur etc., Kattalai Trust.
C.R.P. No. 1666 of 1959.

Practice —Two suits between same parties for identical reliefs—Common judgment and two decrees—Appeal—Court-fee payable.

Though two suits between the same parties were disposed of by a common judgment, so long as the suits are different and there are two decrees, separate appeals have to be filed from each of the decrees and Court-fee has to be paid on each of the appeals.

G. Ramanujam, for Petitioner.

A. Balasubramanian, for Respondent.

R.M. —————— *Petition dismissed.*

Rajagopalan, J.
18th August, 1960.

Manickam *v.* Arunagiri.
W.P. No. 201 of 1960.

Madras Village Panchayats Act (X of 1950), *section* 16 (1)—*Disqualification under—When incurred.*

To satisfy the requirements of section 16 (1) of the Madras Village Panchayats Act, 1950, it is not enough if there is a conviction. The offence for which the person has been convicted should involve moral delinquency and the sentence imposed following the conviction for such an offence should have been one of imprisonment for a period of more than six months. The conviction, sentence and the extent of the sentence specified under section 16 (1) should be established before disqualifying a person under it.

G. Gopalaswami and *A. S. M. Sahul Hameed*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *R. Gopalaswami Ayyangar* and *K. Swamidurai*, for Respondents.

R.M. —————— *Rule absolute.*

Somasundaram, J.
23rd August, 1960.

Susila, *In re.*
Crl. Appeal No. 241 of 1960.

Suppression of Immoral Traffic in Women and Girls Act (CIV of 1956), *sections* 2 (*a*) 3 (1) *and* 7 (1)—*Applicability—"Brothel"—Keeping a brothel or allowing premises to be used as a brothel—Proof—Prostitution in or near public place—Offence.*

Where two girls live in a house and use the house for prostitution, and money is paid to one of them who goes to the bed room with the man seeking her company, and the money is ultimately found on the other girl, it must be held that both of them are using the premises for the mutual gain of both of them. It is not necessary that the prosecution should further establish that what is paid to one of them comes into the hands of the other and *vice versa*. When both the girls are in the house and a man seeking the company of a girl comes there and one of the girls bargains or demands

money and one of them tells the visitor that he can have either of them on payment of a certain amount and the other girl is silent without protesting that she would bargain for herself and merely allows the first girl to bargain for her also and finally the offer is accepted by the visitor who chooses one of the girls and goes into the room with her and the money paid to the latter girl is ultimately found with the other girl, it is a perfectly reasonable and normal inference to draw that the house was being used for prostitution for the mutual gain of both of them, and as such a brothel as defined in section 2 (*a*) and the offence under section 3 (1) of Act CIV of 1956, is established beyond all reasonable doubt.

When the premises in question is within 200 yards of a place of religious worship, and a nursing home and hospital, the offence under section 7 (1), is also made out against the girl prostitute who keeps company with the visitor.

C. K. Venkatamanasimham, for *P. N. George* and *K. Angappa*, for Appellants.

The Public Prosecutor (*P. S. Kailasam*), for the State.

P.R.N. ——— *Appeal dismissed. Sentence confirmed.*

Rajagopalan, J.
25th August, 1960.

Valian *v.* Mari Samban.
W.P. No. 557 of 1958.

Proprietary Estates Village Services Act (II of 1894), *sections* 9 *and* 11 (2)—*Scope of.*

The normal rule of harmonious construction has to be adopted in construing the scope of sections 9 and 11 (2) of the Proprietary Estates Village Services Act, 1894. While section 9 permits the proprietor six weeks' time within which to appoint a person to a vacancy and send notice of that appointment to the Revenue Divisional Officer within the prescribed time, section 11 (2) empowers the Revenue Divisional Officer to make the appointment himself if the notice of appointment under section 9 is not received by him within the prescribed time. Section 9 does not prescribe any time within which notice of appointment should reach the Revenue Divisional Officer. The six weeks prescribed under section 9 do not include within it the date of receipt of the notice by the Revenue Divisional Officer. The expression "if the notice of appointment is not received within the prescribed time" in section 11 (2) of the Act could only mean "if, taking the normal means of communication available, notice of appointment is not received within a reasonable time after the expiry of the six weeks referred to in section 9 of the Act."

R. Venkatachalam, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*) and *E. R. Krishnan*, for Respondent.

R.M. ——— *Rule absolute.*

Somasundaram, J.
26th August, 1960.

Venkatarathinamma *v.*
Corporation of Madras.
Crl. Rev. C. No. 618 of 1960.
Crl. Rev. P. No. 594 of 1960.

Madras City Municipalities Act (IV of 1919), *Schedule IV, rule* 21 (2)—*Distraint is impracticable—What amounts to.*

Under Rule 21 (2) of Schedule IV of the Madras City Municipalities Act the Corporation can resort to the procedure of prosecuting a defaulter for non-payment of property tax only when it is established that the proceedure of distraining the property of the defaulter is impracticable. It must be established by evidence that the distraint was impracticable and if the evidence discloses that no attempt was made to find out whether there were any articles of the accused available on the premises for being distrained, resort to prosecution of the defaulter is not valid.

G. K. Subramaniam, for Petitioner.

T. Chengalvaroyan, for Respondent.

The Public Prosecutor (*P. S. Kailasam*), for State.

R.M. ——— *Petition allowed.*

[SUPREME COURT.]

S. J. Imam, A. K. Sarkar and Raghubar Dayal, JJ.
14th September, 1960.

Sri Narain Das *v.*
The State of Uttar Pradesh.

Criminal Procedure Code (V of 1898), *sections* 195 *and* 476-*B—Order of single Judge of High Court refusing to file complaint for giving false evidence—Maintainability of an appeal against to the Supreme Court—Appeal lies to Division Bench and appeal to Supreme Court is not sustainable.*

Though it is true that the decision of a single Judge of the High Court was as much a decision of the High Court as the decision of an appellate Bench, the Court constituted by the single Judge was a Court subordinate to the appellate Bench of the High Court in view of the artificial subordination created by the provisions of section 195 (3) of the Criminal Procedure Code. An appeal against the order of a single Judge of the High Court refusing to file a complaint against a person for giving false evidence is not maintainable in the Supreme Court. Under section 470-*B* an appeal lay to the appellate Bench of the High Court under section 195 of the Criminal Procedure Code.

Mohan Lal Agarwala, for the Petitioners.

C. C. Mathur, and *C. P. Lal,* Advocates for Respondent No. 1.

G.R. — *Petition dismissed.*

[SUPREME COURT.]

S. K. Das, J. L. Kapur, K. Subba Rao, M. Hidayatullah and N. Rajagopala Ayyangar, J.
19th September, 1960.

Th. Manmohan Deo *v.*
State of Bihar.
C.A. Nos. 273 and 274 of 1955.

Land tenures—Government Ghatwali Tenures—Bihar Land Reforms Act, 1950—*Bengal Regulation (XXXIX) of* 1814—*Acquisition of Ghatwali Tenures.*

'Since Ghatwalis were expressly included under the definition clauses it would require compelling reasons to cut down their amplitude. There were no such reasons and therefore the tenures of the appellants were not excluded from the operation of the Act (*i.e.*) Bihar Land Reforms. The Act has no connection with the defence of India and therefore it was within the competence of the State Legislature to enact it.

L. K. Jha, Advocate, for Appellants.

Lal Narain Sinha, Advocate, for Respondents.

G.R. — *Appeals dismissed.*

[SUPREME COURT.]

S. K. Das, J. L. Kapur, K. Subba Rao, M. Hidayatullah and N. Rajagopala Ayyangar, JJ.
20th September, 1960.

State of Bihar *v.*
Rani Sonabati Kumari.
C.A. No. 83 of 1956.

Contempt of Court—Rule of Law—Duty of the Government servant to obey Court.

"It is of the essence of the rule of law that every authority within the State, including the executive Government, should consider itself bound by and obey the law. It is fundamental to the system of polity that India has adopted and which is embodied in the Constitution that the Courts of the land are vested with the powers of interpreting the law and of applying it to the facts of the cases which are properly before them".

"Once an order has been passed, which the Court had jurisdiction to pass, it is the duty of all persons bound by it to obey the order so long as it stands, and it would tend to the subversion of orderly administration and Civil Government, if parties could disobey orders with impunity. If such is the position as regards private parties the duty to obey is all the more imperative in the case of Governmental authorities.

If disobedience could go unchecked, it would result in orders of Courts ceasing to have any meaning and judicial power itself becoming a mockery. We consider that on the facts of this case there was no justification, legal or otherwise, for the State Government to have rushed the notification, when its application to modify or vacate the order for interim injunction was pending before the Subordinate Court. But more than that when possibly by failure to appreciate their error, the notification had been published, and the propriety and legality of its action was brought up before the Court, the attitude taken up by the State Government and persisted in up to the hearing before us, has been one which we can hardly commend.

"If the Government had deliberately intended to disobey the order of the Court, because for any reason they considered it wrong, their conduct deserves the severest condemnation. If, on the other hand, it was merely a case of inadvertence and arose out of error, nothing would have been lost and there was everything to be gained even in the matter of the prestige of the Government, by a frank avowal of the error and an expression of regret for the lapse and it is lamentable that even at this stage of the hearing before us there was no trace of any such attitude".

Lal Narain Sinha, Advocate, for Appellant.

A. V. V. Shastri, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, K. C. Das Gupta, J. C. Shah and N. Rajagopala Ayyangar, JJ.
20th September, 1960.

Anwar Khan Mehboob & Co. *v.* State of M.P.
C.A. No. 234 of 1958.
(W.P. No. 125 of 1958).

Constitution of India (1950), *Article* 286—*Scope*—*Interstate levy of sales tax.*

When goods are delivered in a State for being changed, delivery must be taken to have been made in that State "for the purposes of consumption " and the goods are liable to sales tax in that State. The petitioners, after purchasing the tobacco in Bombay, subjected it to some process leading to its conversion into bidi pattis, in Bombay itself. According to the Court this process of conversion was sufficient to constitute "consumption for the purposes of Article 286 of the Constitution."

G. S. Pathak, Advocate, for Appellant-Petitioner.

H. J. Umrigarh, for Respondents.

G.R. ——— *Order accordingly.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
20th September, 1960.

T. Cojee *v.* U. Jormani K. Siem.
C.A. No. 394 of 1960.

Government—*Powers of the former Chiefs of Khasi States before the Constitution to dismiss servants.*

"The respondent was holding the office of Siem by virtue of his appointment in the first instance by the Governor and later on confirmation by the District Council and was thus no more than an administrative officer appointed by the District Council."

"The District Council had the power to appoint and remove the Siem in accordance with the terms and conditions of his appointment, and in the present case the Executive Committee was empowered to act on its behalf.

The order of suspension was also upheld by the Court with the observation that unless there was an express provision in the contract of employment the wages of the respondent could not be withheld during such period.

C. K. Daphtary, Solicitor-General of India, for Appellant.

N. C. Chatterjee, for Respondent No. 1.

N. Lall, for Respondent No. 2.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta and J. C. Shah, JJ.
26th September, 1960.

Atiafari Tea Co. *v.* State of Assam and H. P. Barua *v.* State of Assam.
W.P. Nos. 246 of 1956 & 2 of 1959. and C.A. Nos. 126-128 of 1958.

Assam (Taxation on Goods Carried by Road and Inland Waterways) Act, 1954—Ultra vires *the Constitution of India,* (1950) *Articles* 301 and 304-*B*—*Article* 245 *of the Constitution.*

By majority (Sinha, C.J., dissenting).—The words used in Article 301 of the Constitution were unambiguous, and it would be unreasonable to exclude from their ambit a law which restricts trade, commerce or intercourse either directly or indirectly. The provision contained in this Article guaranteeing the freedom of trade, commerce and intercourse embodied and enshrined a principle of paramount importance that the economic unity of the country would provide the main sustaining force for stability and progress and for the political and cultural unity of the country.

Article 304-B of the Constitution empowered the State Legislature to impose reasonable restrictions on the freedom of trade with other States or within its own territory. But such legislation must satisfy the conditions that it had received the previous sanction of the President and that it was in the public interest.

N. C. Chatterjee and *B. Sen*, for Petitioners and Appellants.

M. C. Setalvad, Attorney-General of India and *S. Lahiri,* Advocate-General, Assam, for Respondents.

Mahabir Prasad, Advocate-General, Bihar and *S. M. Sikri,* Advocate-General, Punjab, on behalf of their own States and on behalf of Madras, Rajasthan and U.P. States, for Interveners.

G.R. *Petitions and appeals allowed.*

Ramachandra Iyer, J.
7th July, 1960.

Chinnamuthu *v.* Ganapathi.
C.R.P. No. 848 of 1959.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *section* 3—*Jurisdiction of Revenue Court under—Warrant for possession for failure to pay the rent as agreed upon in a compromise in prior proceedings—Legality.*

The provisions of section 3 of the Madras Cultivating Tenants' Protection Act enjoins on the Revenue Divisional Officer to hold a summary enquiry and pass appropriate orders in cases when a petition is filed under the section for eviction of a tenant on the ground of default in payment of rent. In the absence of an application under section 3 (4) (*a*) and in the absence of an enquiry the Revenue Divisional Officer will have no jurisdiction to pass an order for possession against a tenant on the basis of a compromise agreement arrived at between the landlord and tenant in previous proceedings which agreement went beyond the subject-matter of the proceedings themselves. The Revenue Divisional Officer will have no jurisdiction to execute a decree which embodies terms beyond the scope of the petition itself.

V. Krishnan and *P. Veeraraghavan,* for Petitioner.

M. Ramachandran and *T. V. Balakrishnan,* for Respondent.

R.M. *Petition allowed.*

Ramachandra Iyer, J.
14th July, 1960.

Radhakrishna Mills, Ltd. *v.* Labour Court, Coimbatore.
W.P. No. 487 of 1958.

Industrial Disputes Act (XIV of 1947)—*Disciplinary action by employer—Alleged commission of offence by employee—Finding of Criminal Court—Binding nature of.*

Where an employer takes disciplinary action against an employee on the ground of his being guilty of a criminal offence, *e.g.*, assault, it is the duty of the employer to accept and treat as conclusive the findings and orders of a Criminal Court trying that offence. It may be that when a prosecution for the alleged commission of the offence is only pending before a Criminal Court, the employer is not bound to wait for the decision of the Court before taking action against the employee. Though in cases of a grave nature it would be advisable for an employer to await the decision of at least the trial Court, in cases of a simple nature the employer can proceed with his own domestic enquiry and come to his own decision as regards the disciplinary action to be taken even though a criminal case was pending, before the Court. But where once the Court has acquitted the person concerned of the offence charged it is the duty of the management to accept the same and failure to do so would clearly show that the employer did not act *bona fide* in the matter and an Industrial Tribunal will be justified in interfering with the decision of the employer terminating the services of the employee on the ground of disciplinary action.

M. R. Narayanaswami, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *S. Mohan Kumaramangalam* and *K. V. Sankaran,* for Respondent.

R.M. *Petition dismissed.*

Rajagopalan, J.
29th July, 1960.

Express Newspapers (P) Ltd. *v.* Regional Provident Fund Commissioner, Madras.
W.P. No. 563 of 1959.

Employees' Provident Fund Act (XIX *of* 1952)—*Sections* 8 *and* 15 *and paragraph* 28 *of the Employees' Provident Fund Scheme—Effect of—Recovery of the amount liable to be transferred—Recovery as arrears of land revenue—From whom could be recovered.*

Section 8 of the Employees' Provident Fund Act, 1952, does not by itself impose any liability on an employer to pay any amount. It only provides for recovery of the amount liable to be transferred under section 15 (2) of the Act as arrears of land revenue under the Revenue Recovery Act. Section 15 (2) creates the liability to transfer the fund though it does not specify on whom is the liability to effect the transfer.

On the relevant date when the provisions of the Act and Scheme are made applicable to any establishment the liability to transfer the assets of the provident fund is on the person who is then in charge of or entrusted with the management of the provident fund. Where an employer has transferred the provident fund to a board of trustees before the date of applicability of the Act and Scheme then it is the trustees that will be the authority entrusted with the management of the fund within the meaning of para. 28 of the Scheme and it is on them that will be the liability to transfer the fund under section 15 (2) of the Act. Where an employer has divested himself lawfully of the charge of the provident fund he is no longer under liability to transfer the same under section 15 (2) of the Act and the provisions of section 8 cannot therefore be invoked against him for recovery of the same.

V. P. Raman, for Petitioner.

The Government Pleader and the Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. *Rule absolute.*

THE COMPANIES AMENDMENT BILL, 1959: JOINT SELECT COMMITTEE'S REPORT

By

K. VENKOBA RAO, M.L.

The Select Committee which has submitted its Report fifteen and a half months after the Amending Bill was referred to it, has done a good job and produced a comprehensive, well reasoned and valuable document which is likely to be quoted authoritatively in future whenever any controversy arises as to the interpretation of the new legislation. The Report occupies 20 pages and the Dissenting Minutes run to 29 pages. Some of the dissenting members have taken objections against the new clauses of a far-reaching and drastic character which have been introduced by the Joint Select Committee. The view of these dissenting members is that usually a Select Committee should confine itself to making such changes as are incidental or relevant to the clauses of the Bill unless the terms of reference to them include making recommendations outside the clauses of the Bill as well. These new proposals, it should be noted, have not been considered by the interests concerned, nor have they been put before the witnesses who gave evidence before the Joint Select Committee. So far as this technical objection is concerned it should be remembered that the Joint Select Committee which sat on the parent Bill which became the Act of 1956 and which included such eminent lawyers as Mr. N. C. Chatterjea also introduced many changes of a far-reaching character and therefore the present Joint Select Committee has precedent to support the method it has adopted. Another aspect of the Bill which has come in for criticism is that here also as was the case with Life Insurance Business the failure of high Government officials, to use the wide and drastic powers that they had under the existing law has been used as an excuse or argument to give still wider powers to the same system if not the same officers of Government. How that will improve matters it is difficult to understand. There is some force in this criticism because any law which ignores the human element involved in its administration is bound to be unreal and ineffective if not positively harmful and mischievous. It is not the number of weapons in the armoury of the enforcement officers that matters, but their timely and judicious use.

The Bill as it has emerged from the Joint Select Committee suffers also in some places from loose drafting. New section 233-A relating to special audit which will be considered in detail later is a striking example.

It is gratifying to note that the Joint Select Committee has adopted some suggestions which the present writer made in regard to amendment of some of the important clauses of the Bill like those relating to when a private company is to be considered as the subsidiary of a foreign public company; publication of Chairman's speech alone at the expense of the company in newspapers, seesawing of Company between status of public and private company, etc.

DEFINITIONS.

The Committee has slightly amended the definition of 'associate of managing agent' suggested in the Bill. The amendment is somewhat complex and can be explained by an example. If the managing agent is company *A* and manages company *B* and *A* together with its holding or subsidiary companies and the directors, etc., of such companies controls more than one-third of the total voting power in company *B* the subsidiary of company *B* is also an associate of company *A* according to a new clause in the Bill. The Committee has suggested that where company *A* is the managing agent also the subsidiary of company *B*, which we can call company *C*, the subsidiary of company *C* is not an associate of company *A*. The Committee has attempted the difficult task of defining a managing director with not very happy results. The definition as settled in the Bill and amended by the Joint Select Committee boils down to this: a director will not be considered to be a managing director unless he is vested with substantial powers of management; doing administrative acts of a routine nature like drawing cheques, signing share certificates, and directing registration of transfers does not amount to exercise of substantial powers of management. The definition will not help Courts and businessmen much, for it is vague and uses the word "substantial"

which can mean very much or very little and is very slippery and it tells us what does not amount to substantial powers of management and does not tell us what exactly is comprised in the phrase 'substantial powers of management.' It is suggested by some that if a director is paid a monthly salary and is placed in charge of one unit where the company's activity embraces several units he is a managing director. But this definition breaks down in a case where both the conditions laid down by it are satisfied and still the director does nothing except signing cheques, etc. The present writer feels that there is not much of a mystery about a managing director's functions at all and it is merely a phantom of the imagination. Sections 292 and 293 of the Companies Act are clear pointers towards what such functions are and unless a director is vested with the powers of making calls, issuing debentures, investing the funds of the company, making loans, selling or leasing the undertaking, remitting debts, etc., he is neither in law nor in fact a managing director. The Select Committee has also added a small rider that the managing director should exercise his powers subject to the control of the board. In the case of a manager one can understand his being subject to the control of the board. But in the case of managing agents and managing directors who derive their powers through the articles, control by the board is an empty phrase and does not have much meaning because the articles form the charter of rights for the managing agent or managing director and the control of the board must be exercised strictly within the limits of such articles. If the entire capital of an Indian private company is held by one or more foreign public companies according to the Committee the former is not a 'subsidiary of a public company'. Some improvements to the above definition might be suggested. The exemption should also apply where the entire capital is held by one or more foreign public companies and also foreign individuals and associations, for in this case also there is no question of Indian capital being involved and so the exemption should logically be given. Also where at least 75 per cent. of the capital is held by foreign public companies, etc., the rest of the Indian capital which is small and forms only 25 per cent. should be ignored and the exemption should equally apply to such a case also. For it must be remembered the objective of the Act is to control indigenous and not foreign capital, and make the former fruitful by putting it into the socialistic straight jacket. Power is now given to the Central Government to declare an establishment engaged in processing to be a branch office. The words 'carrying on' in section 8 governs also the words 'any promotion or manufacture' and therefore it is submitted with respect that there is no necessity for adding the words 'any establishment engaged in'.

PRIVATE COMPANY TO BECOME PUBLIC COMPANY IN CERTAIN CASES.

This clause occupying more than two pages has been recast by the Committee. The net effect of the amendment can be summed up as follows :—Where the entire paidup capital of a private company is held by another private company or by one or more foreign companies public or private it is a private company. Where the entire paidup capital of a private company is held by a public company it is a public company. Where less than 25 per cent. of the paidup capital of a private company is held by other bodies corporate (that is public or private companies whether Indian or foreign) it is a private company. Where not less than 25 per cent. of the paidup capital of a private company is held by one or more private companies whether Indian or foreign the former is a private company provided no body corporate is the shareholder in any of the shareholding companies and the total number of members of the former and the shareholding companies does not exceed 50. If any of the above conditions is not satisfied the company will become a public company. Within three months after becoming a public company it has to inform the Registrar who will delete the word 'Private' in the name of the company and issue a fresh certificate of incorporation. No resolution changing the name is necessary. Where a public company's shareholding in a private company subsequently falls below 25 per cent. of the paidup capital of the latter, the latter does not cease to be a public company, till it converts itself into a private company by amending its articles with the approval of the Central Government. This provision conflicts with the first proviso to new section 43-A (1) which says that even after it has become a public company the private company can continue to have

articles restricting the right to transfer shares, etc. In such a case the public company can convert itself into a private company merely with the approval of the Government without altering its articles. Sub-section (4) should be brought in line with the proviso to sub-section (1). One point is left in doubt. It is this. Suppose in private company *X* 30 per cent. of the paidup capital is held by private companies *A*, *B* and *C* and the total number of members of *X*, *A*, *B* and *C* does not exceed 50. *X* will continue to be a private company. Suppose there is an increase in the number of members of *A* with the result that the total number of members of *X*, *A*, *B* and *C* exceeds 50. Does *X* cease to be a private company? The section is not quite clear on this point. In sub-section (6) (*b*) (i) after 'private company' words 'or would be a private company if incorporated in India' should be added to make it clear.

RIGHTS ISSUE.

The Committee has made substantial alterations in this clause. The result is that if the company passes a special resolution to that effect the new shares may be offered to any persons chosen by the directors and not necessarily the equity shareholder. Also if the company passes a resolution in general meeting that the shares may be offered to strangers and the Central Government on the application of the board approves of the proposal, effect can be given to the resolution. Incidentally it may be pointed out that section 81 (1-A) (*b*) can be condensed into 'if the company in general meeting resolves to that effect'. Otherwise it may be construed that for passing such a resolution, notice of meeting is not necessary for this clause has reproduced section 189 (1) except that part of it which releates to notice. Loans or debentures subject to the term that they can be exchanged for shares can also be offered to strangers, provided the company has passed a special resolution to that effect and the Central Government has approved of the same or the offer is in conformity with rules made by the Central Government. As suggested by the Viswanatha Sastri Committee Report, the section should also be made applicable where the issued capital is fully subscribed and the subscribed capital has been increased by the issue of new shares. (*See* Sastri Report, page 41, lines 1 to 9). This can be done by adding the words 'issue or' before the word 'allotment' in section 81 (1), where the word occurs for the second time. Another criticism which can be offered is that there is no magic in a special resolution. For, after all five members can form a quorum in a public company and if four of them vote for a resolution it is passed as a special resolution. It amounts to this that four members can deprive the equity shareholders of their rights. A resolution passed by one-third of the total voting power would afford a better safeguard for protecting the equity shareholders' rights.

DUPLICATE SHARE CERTIFICATES.

The Committee has increased the penalty for issuing fraudulent shares certificates. Formerly the penalty was a uniform one for the company and the officers concerned namely a fine of Rs. 1,000. Now in the case of the company the fine is increased to Rs. 10,000 and the officer is punished with Rs. 10,000 or with imprisonment up to six months or both. It should be clearly laid down that the company should not charge more than 10 per cent. of the face value of the share for advertising the loss in newspapers. Otherwise small shareholders would prefer to do without a fresh certificate rather than incur heavy costs in getting the same. The words 'Notwithstanding anything to the contrary contained in the articles' in section 84 (4) are unnecessary having regard to section 9 which provides that the Act shall override articles, etc.

ADDRESS OF REGISTERED OFFICE.

The Committee has recommended that the address of the registered office should also be painted along with the name of the company on the outside of every place where it carries on business.

ANNUAL GENERAL MEETING.

The Bill took away the power vested in the Registrar to extend the time for holding annual general meetings by six months. The Committee has restored

this power to the Registrar, who however can extend the time only by three months and not six months.

NOTICE OF MEETING.

The Committee is not in favour of increasing the period of notice from 21 to 28 days. But it has cut down the period of Special Notice from 28 to 14 days. Illogically enough the Act provided that the company should give 21 days' notice of the meeting and a member who wanted to move a resolution requiring special notice should give 28 days' notice. This is impossible and the error has been rectified now.

EXPLANATORY STATEMENT.

Only where the director managing agent, etc., holds not less than 20 per cent. of the paidup share capital of the company such interest in the item of business must be disclosed in the Explanatory Statement. This is a welcome relief.

BOARD RESOLUTION UNDER SECTION 297.

The Committee has recommended that board resolutions according consent to contracts specified in section 297 need not be filed with the Registrar as provided in the Bill because it will entail a good deal of expense for the company and would also throw an undue burden on the Registrars.

MINUTES OF MEETINGS.

The Committee has made some changes in respect of this matter. The minutes have to be entered within fourteen days of the meeting and cannot be pasted to the minutes book. They must be handwritten, it follows; for typing cannot be done in a bound book. Every page of the minutes book must be initialled or signed by the chairman of the meeting, etc. The original clause in the Bill provided only for signing and not for initialling. The Committee has now made a distinction between board minutes and minutes of general meetings. The former can be signed by the chairman of the meeting or the chairman of the next meeting. The latter can be signed only by the chairman of the meeting and in the case of his death, etc., by a director duly authorised to sign. The last page of the minutes must be signed by the chairman of the meeting, etc., and signed.

PUBLICATION OF CHAIRMAN'S SPEECH.

The Bill provided that the chairman's speech could not be published at the expense of the company unless it was accompanied by a summary of the proceedings of the general meeting. The Committee think that the chairman's speech serves a useful purpose because it is of interest not only to the shareholders, but also to the public and the Government and therefore it should be published separately at the expense of the company without being accompanied by a summary of the proceedings of the general meeting.

DIVIDEND.

The Committee has made drastic alterations in this clause. Dividends can be paid only out of profits of the company for the current year or previous years, which remain undistributed, after providing for depreciation in the manner laid down by the clause. Some elbowroom is now left as to the method of calculating depreciation. It can be calculated as per section 350 ; or where no rate of depreciation is laid down by the Income-tax Act or Rules made thereunder, on such basis as may be approved by the Central Government by any general order published in the Gazette or by any psecial order. The above rule as to provision for depreciation is hedged in with a number of exceptions. In respect of financial years which fall before the commencement of the Amending Act and out of whose profits dividend is paid, no provision for depreciation need be made. The phrase ' financial year falling before the commencement of the Amending Act' is somewhat ambiguous. Suppose the Amending Act comes into force on 1st April, 1961. Suppose the financial year of the company is the calendar year. Does the calendar year 1961 fall before the commencement of the Amending Act? In one sense it does because it commences before the coming into force of the Amending Act. But another interpretation would be that the calendar year must end before the commencement of the Act in order that the former may fall before the commencement of the Amending Act.

This doubt must be cleared. Again the Central Government may in public interest allow a company to declare dividends without making provision for depreciation. If the dividend is declared out of the profits of financial years which fall after the commencement of the Amending Act provision for depreciation has to be made and loss incurred in those years must be made good before declaring dividend. Proviso (*a*) to clause (1) is really unnecessary in view of Proviso (*c*) to clause (1). One can infer that losses incurred in finanacial years preceding the commencement of the Amending Act need not be made good before declaring dividends from the language of clause (1) (*b*) which refers to financial years falling after the commencement of the Amending Act. It is better to put this down in black and white instead of leaving it to be indirectly inferred. The amendment has left unsolved many knotty questions such as whether loss of fixed capital should be made good before declaring dividend. The law is that loss of circulating capital must be made good but loss of fixed capital need not be made good out of income. Even the distinction between fixed and circulating capital which in an abstract treatise like Adam Smith's Wealth of Nations is appropriate enough may with reference to a concrete case be quite inappropriate. To give an example, if one ship is lost out of a considerable number must all dividends be stopped until the value of the lost ship is made good out of further earnings of the company? On the one hand people put their money into a trading concern to give them an income and the sudden stoppage of all dividends would send down the value of their shares to zero and possibly involve its ruin. On the other hand companies cannot at their will and without the precautions enforced by the statute reduce their capital; but what are profits and what is capital may be a difficult and sometimes an almost impossible problem to solve. Many matters of this kind according to the judgment of the House of Lords in *Dovery* v. *Cory*[1] will have to be considered by men of business which are not altogether familiar to a Court of law. Premium on the issue of shares is now capital. But the position is not clear as to premium on shares issued before the commencement of the Companies Act, 1956, which does not form an identifiable part of the company's reserves, which according to section 78 (3) Proviso is not capital. The inference is that dividend can be declared out of such premium. Palmer "Company Precedents", 17th Edn., Vol. I, pages 604-605 is of the view that the following are profits:—(*a*) Accretions to capital realised; and though not realised immediately realisable and proved to exist. (*b*) Profits carried to reserve. (*c*) Profit resulting from the payment off by the company of its debentures at less than par. The following are not profits:—(*a*) Goodwill. (*b*) Where a company purchases the business of another company including the profits of that company available for dividend all such sums become capital in the hands of the purchasing company and cannot be distributed as dividend. The Committee has rightly deleted the provision in the Bill that the dividend amount must be deposited in a scheduled bank within fourteen days of its declaration. The time within which the dividend must be paid has been reduced from three months to 42 days. Penalty for breach of the above provision under the Bill was fourteen days' imprisonment for the director, managing agent, etc., concerned. The Committee has restored the penalty of seven days' imprisonment in the Act.

INSPECTION OF BOOKS OF ACCOUNT.

The Bill gave the Registrar also power to inspect the books of account in addition to the directors. The Committee has provided that any officer of Government authorised by the Central Government shall also be entitled to inspection if in the opinion of the Registrar or such officer sufficient cause exists for such inspection. A slight discrepancy between the Report and clause 59 as settled by the Committee may be pointed out. The Report (page xiii) refers to the opinion of the Central Government while clause 59, sub-section (4), Proviso refers to the opinion of the Registrar or officer. Penalty for breach has been enhanced by the Committee by providing for imprisonment up to six months in addition to fine. Offence is not punished unless it is wilful. The Committee has added the managing director to the list of persons who are punished for failure to take reasonable steps to secure compliance with the section.

1. I.L.R. (1901) A.C. 477.

PROFIT AND LOSS ACCOUNT.

This must be made up as recommended by the Committee up to a date not preceding the date of the annual general meeting by more than six months. Formerly the account could precede the date of the annual general meeting by nine months. The principle is stale accounts are no better than no accounts.

BALANCE SHEET.

The Committee has recommended that the balance sheet can be drawn up according to Schedule VI, Part I or in such other form as may be approved by the Central Government either generally or in any particular case. Progressive companies are therefore free to adopt the latest techniques in the presentation of accounts developing in Western countries. The balance sheet of a private company can be inspected by non-members but the profit and loss account can be inspected only by members. If both are filed together with the Registrar non-members will be enabled to inspect the profit and loss account. To prevent this the Committee has recommended that the two documents should be filed separately with the Registrar.

SPECIAL AUDIT.

Where the affairs of any company are not managed in accordance with sound business principles or prudent commercial practices or where it is managed in a manner likely to cause damage to the particular industry or the financial position of the company is such as to endanger its solvency the Government can appoint a chartered accountant in practice or not or the auditor of the company to conduct a special audit of the company. The special auditor will make his report to the Government and the Government can take action on the Report under the provisions of the Companies or any other Act. Any person who is ordered by the Government to furnish information to the special auditor if he fails to do so is punished with fine up to Rs. 500. The expenses of the special audit can be recovered from the company as an arrear of land revenue. Such in brief are the provisions of the above Draconian law which can be termed vague, purposeless and unwarranted. The Government under the existing law can on the report of an inspector under section 241 of the Act either prosecute the offenders or apply for winding up or an order under section 397 or sue for recovery of damages for fraud or the property which has been misapplied, etc. There are certain safeguards provided for the procedure of inspection, namely, it can be on the application of at least two hundred members, etc. It is not known whether the intention of the new provision is to bypass the salutary restrictions contained in section 235 by brandishing 'special audit'. Both the Report of the special auditor as also the decision of the Government to order special audit are *ex parte* and the company is not allowed to make representations against them. This runs contrary to the principles of natural justice. Again the special audit can be ordered if the Government is of the *opinion* that the conditions mentioned in the section exist. The mere opinion of the Government will do whether based on reasonable grounds or not. *Opinion* is a milder word compared to *satisfaction*. Satisfaction must be objective and can be scrutinised by the Courts as was held by the House of Lords (some Law Lords) in the *Liversidge case*[1]. It is regrettable that the trend of all legislation is to increase executive power (very little of it is used) offending the spirit if not the letter of Part III of the Constitution.

The only feeble parallel which one can find for this innovation is the Bombay Co-operative Societies Act, 1925 and the Rules thereunder. If as a result of inquiry held under section 43 (on the application of one-third of the members) or an inspection under section 44, the Registrar of Co-operative Societies thinks the audit arranged by the society is seriously defective he can order an official auditor to audit the accounts of the society. Unless something is wrong with the company a roving audit intended to fish out some thing fishy is less than fair to the company. The provision in couched in very loose and popular language which Courts may find it difficult to interpret. 'Prudent commercial practice' is a very slippery term. Commercial practice varies from industry to industry and from one region to another.

1. *Liversidge* v. *Anderson*, L.R. (1942) A.C. 206.

'Prudent' is also a word very difficult to define. To one businessman prudence may consist in appointing those connected to him by caste or political bonds. Another may think differently. What is likely to cause serious damage to the industry in which the company is engaged is something about which an astrologer rather than a lawyer or commercial man is more competent to express an opinion. Again the provision draws a subtle distinction between damage to the industry and damage to the interests of the industry. Only the latter falls within the section. The phrase 'financial position such as to endanger solvency' is equally intriguing. That means the Government can impose its own views as to the adequacy of the security on which the company has made loans and shake the company's credit which is the very life-breath and foundation of all business. The repercussions which the provision will have on business are very serious indeed. Again if the company is not being managed prudently why have ordinary audit and then appoint the ordinary auditor as special auditor or appoint another person as special auditor? This is baffling to the uninitiated. Again it is a fallacy to assume that the evidence for bad management will be found completely enshrined in the books of the company. It will be difficult to catalogue all the various sources oral or written pointing to such a state of affairs. Auditors have no doubt a vital function to perform. But the new provision elevates them to the status of supermen who can work miracles.

Again the new provision provides that the Government may take action on the Report of the special auditor either under the Act or the provisions of any other law. In this connection it may be well to remember section 616 which lays down that where there is inconsistency between the provisions of the Companies Act and the Banking Companies Act or Insurance Act or Electricity Supply Act the provisions of the latter will prevail over the Companies Act. That means to justify action on the report of the special auditor the conditions laid down by those Acts must be satisfied. Those conditions do not have much to do with audit. One fails to see therefore how special audit will facilitate taking of action under those other Acts. The last line of new sub-section (6) is more of a rhetorical flourish than a practical guide. It will be convenient here to consider the action which Government can take under other Acts against companies. Under section 35 of the Banking Companies Act the Government after an inspection by the Reserve Bank can direct the Reserve Bank to apply for windingup or it may prohibit the company from receiving fresh deposits. The Reserve Bank can cancel the license of a banking company if it is conducting its affairs to the detriment of the interests of the depositors. Under the Industries Development and Regulation Act the Government can order an investigation into the affairs of an industrial undertaking which is being managed in a manner detrimental to public interest, etc. After such investigation it may give directions to the undertaking regulating the production of articles, controlling prices, etc. If the undertaking fails to comply with such directions the Government can take over the management of the undertaking. Under the Insurance Act the Controller can cancel the registration of an insurance company if it acts in contravention of the Act Rules, etc. If the company is acting in a manner prejudicial to the interests of policyholders the Government can appoint an administrator. The Controller can also apply for winding up if the continuance of the company is prejudicial to the interests of the policyholders. It will thus be seen that all the above kinds of action envisaged by the various Acts referred to above can be taken without ordering special audit. Special audit does not in any way facilitate such action or render the existence of conditions laid down by those Acts superfluous. After all it should be borne in mind that the primary purpose of audit is to present a true picture of the state of the financial affairs of the company to members, creditors and the public. It cannot be used to justify coercive action against the company unless fraud or some criminal offence is made out against the company or its officers. This elementary principle is ignored by the new provision. The object which the amendment appears to have in view can be achieved better if the suggestion made by the Society of Investment Analysts to the Jenkins Committee which is currently engaged in suggesting amendments to the English Companies Act is accepted. It is that the accounts must show the turnover wages and salaries, materials consumed, etc. We can also take a leaf out of the Italian Company Law under which where there are

three auditors one must be from a special register of auditors who have been in practice for a specified number of years and have experience in special fields like company director, etc. If there are five auditors two must be from the special register and so on. This is a better formula than that of special audit.

Sole Selling Agent.

Where the sole selling agent is an individual the restriction placed on his term of office by section 204 (namely it cannot be more than 5 years at a time) does not apply, because section 204 applies only to firms and bodies corporate. This loophole has been plugged by the Committee and under amended section 294 even an individual who is sole selling agent cannot hold office for more than 5 years at a time. Apparently individuals who had been appointed before the amending Act for more than 5 years will continue to enjoy their privileges. The absolute prohibition against the conversion of managing agencies into sole selling agencies has been watered down. Now such a conversion is possible with the approval of the Central Government in the case of managing agents who resign after the amendment Act and want to convert themselves into sole selling agents. If the terms of a sole selling agency are prejudicial to the interests of the company in the opinion of the Government (it is not the satisfaction of the Government but their *opinion* which does not require such a high degree of judgment as is required for satisfaction) the Government can vary the terms. The Government can call for information regarding the terms from the company and if it refuses to furnish the information the Government can appoint a suitable person to investigate and report. The Government can also declare a selling agent to be a sole selling agent. The power given to the Central Government under sub-clause (4) (*c*) of the Bill to prohibit the appointment of sole selling agent in any particular industry has been quietly withdrawn by the Committee. One of the Members of the Select Committee is of the view that this power has been introduced to make it easier for the State Trading Corporation to enter by the backdoor the field of sales of the products of a particular industry. Since the provision does not apply to foreign companies the fear that they may appoint sole selling agents on realistic terms and capture the Indian markets to the detriment of Indian manufacturers is not altogether unjustified.

Managing Agents.

Where the managing agent is a private company every member who exercises not less than five per cent. of the total voting power therein is also deemed to hold the office of managing agent. This amendment is directed against the practice of managing agency companies transferring managed companies in excess of ten to other managing agency companies which are really in the same group and which manage less than ten companies each. Contracts between the company and the managing agent for the supply of services under section 360 require now in addition to a special resolution the approval of the Central Government. Loan to a firm in which a partner is a body corporate under the same management is also prohibited now. Companies should keep a register showing the names of all bodies corporate under the same management, particulars about the loans, etc. Investments indebentures and rights shares are taken out of the percentage ceilings fixed by section 372.

Legal Proceedings.

The Committee has recommended that in a criminal proceeding under section 633 (1) the Court should not have power to grant relief from any civil liability which may attach to an officer in respect of default, etc. The meaning of this amendment is far from clear. Does it mean that for obtaining relief from civil liability fresh proceedings must be started? Or does it mean that if an officer is prosecuted he is debarred from claiming all relief from civil liability? Sub-clause (2) is not a drafting improvement because under section 10 (2) even a District Court may be a 'Court' under the Act. Assuming the intention is not to vest the jurisdiction under sub-section (2) in the High Court exclusively no case is made out for changing it. Having regard to the fact that the Bombay High Court has held that sub-section (2) applies also to criminal proceedings the new Proviso to sub-section (1) may cause difficulties.

MR. JUSTICE SOMASUNDARAM

Retirement from Bench.

A perfect gentleman and a good Judge—these simple but pregnant epithets characterise the Hon'ble Mr. Justice Somasundaram, Judge of the Madras High Court, who retired from service on the 15th of November, 1960, after serving as a Judge for over twelve years. Glowing tributes of sincere appreciation were paid to the Judge the previous day, when he sat on the Bench for the last time to dispose of cases.

Born in 1900 in holy Chidambaram in South Arcot District and educated in the institutions founded by a great philanthropist—Mr. Somasundaram has inherited certain qualities of head and heart that are not given to the ordinary run of men. He had his early education in the Pachayappa's High School at Chidambaram and graduated from the Pachayappa's College, Madras and took his Law Degree from the Madras Law College. Enrolled as an Advocate of the Madras High Court in 1926, he was privileged to be associated in his work with two of the eminent leaders of the Madras Bar on the Criminal Side, the late Mr. V. L. Ethiraj and the late Mr. Nugent Grant. Naturally his work as a lawyer was also concentrated on the Criminal side, which experience enabled him to learn the science of human experience.

The twelve years of his Lordship's tenure of office on the Bench has probably overshadowed many other facets of his life. His has been a life of dedication and his time, energy and money has been utilised only to help the people round him—be they relations, friends or even strangers who were not so privileged in life. This is no occasion to enter into a debate over the poet's or philosopher's evaluation of single blessedness. But Mr. Somasundaram's life of singleness has not in any way detracted the balanced development of the three-fold aspects of human life, body, mind and spirit. Pious and unostentatious he laid stress on the higher values of life. He is one of those rare personalities who, though in the midst of worldly surroundings, have realised the comparative littleness of human achievements. With a traditional upbringing and self-ordained life of discipline he has outlived the ambition of display and has learnt to bear criticism without irritation, anger or retaliation. These great qualities of virtue stood him in good stead in the life he has chalked out for himself and in a path where people would normally have lost their way, he strode like a giant commanding respect and reverence from his friends and associates. While he held precious the good opinions of the just, neither love of friends nor fear of foes swerved him from the path of duty. His life is an excellent synthesis of the ancient and modern and is an example to those, especially of the younger generation, who think that our traditional concepts of life based on dharma cannot go hand in hand with modern social needs and surroundings.

With a temperament that is at once easy and jovial, a beaming smile that bears no ill will to anyone, a great heart, a quickness in his manners, alertness of mind he was and is a happy man who envies nobody and whom nobody envies. The enormous patience with which he listened to arguments before him and the consideration he showed towards the members of the Bar has endeared him to them so much that they felt that they were addressing one among them. The junior members of the Bar especially felt quite at home in his Lordship's Court as his Lordship always came

to their assistance. With no pretensions to omniscience or preconceived notions or bias his Lordship was willing to read and learn the case before him with the assistance of counsel. Very rarely indeed in these years when he sat on the Bench could one have seen even a slight frown, much less an angry retort from his Lordship. If on rare or exceptional occasions his Lordship was prvokoed to make some harsh observations from the Bench, without the least hesitation, it could be attributed to the conduct of counsel or party in trying human patience beyond the endurance limit; His Lordship's life on the Bench was mostly in disposing of criminal cases and only a section of the Bar had occasion to come into close contact with him. But even a stray observer could note the informal and cordial way in which his Lordship exchanged views with counsel as to the facts and law in a case.

In the Fourth Court hall, filled to capacity by members of the Bar and Officers of the High Court, on the 14th instant Sri T. M. Krishnaswami Ayyar, President of the Advocates' Association, bidding farewell to his Lordship, characterised the Judge as just, conscientious and God-fearing. The speaker referred to the unfailing courtesy shown by his Lordship to the members of the Bar and his high qualities and affable manners. Mr. S. Chellaswamy, President of the Madras Bar Association, bidding farewell on behalf of the Association, referred to his Lordship's equanimity, simplicity and erudition.

Mr. Justice Somasundaram's Reply

Replying to the felicitations offered on the occasion, his Lordship acknowledged with gratitude the guidance and training he received from his Lordship the Chief Justice, Sri P. V. Rajamannar, whom he described as his friend, philosopher and guide. Paying tributes to the excellence of the Madras Bar, his Lordship referred to the growing pessimism among the younger members of the Bar about their future prospects and opined that the present was only a passing phase and the opportunities to the lawyer were plentiful and bright in the days to come: Sounding a note of warning his Lordship observed: "An independent judiciary is the *sine qua non* for the successful working of democracy. This is apt to be forgotten by those in power in their thirst for power. Indications of attempts to undermine the independence of the judiciary are not wanting. It is here that the Bar must resist and see that the independence of the judiciary is maintained. The trouble is that the man in power thinks that he will always be in power. He frowns when the acts of those in power are questioned in a Court of Law and gets displeased if orders were set aside by the Courts. It is only when he is out of power that he realises the need for the judiciary to be independent. The Bar must resist all attempts likely to result in undermining the independence of the judiciary."

His Lordship paid a tribute to the Officers and staff of the High Court making special mention of the Shorthand Writers, Bench Clerks and the staff of the Administrative Department.

We wish to add our small share of tributes to the great human Judge who has won the affection, appreciation and admiration of one and all. We invoke the blessings of Lord Almighty to bestow on him long life and good health in his retirement.

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, K. C. Das Gupta, Tobacco Mfg. Co. Ltd. *v.*
J. C. Shah and N. Rajagopala Ayyangar, JJ. Commissioner of Sales Tax.
26th October, 1960. C.As. Nos. 202 and 203 of 1958.

Bihar Sales Tax Act—Inter-State and intra-State sales—Article 286 (1) *and* (2) *of the Constitution.*

The company was liable to pay sales-tax under the Bihar Sales-tax Act on the sales in which the goods were delivered for consumption, not in the State of first delivery, but in other States.

It was further held that though the company was entitled for refund of the tax of sales falling within type (*a*) those in which the goods thus delivered were for consumption in the State of first delivery or first destination ; it was not entitled to a refund of the tax on transactions falling within type (*b*) those in which the goods thus delivered were for consumption, not in the State of first delivery but in other States.

This case is distinguishable from the case reported in (1953) S.C.R. 1069 : (1953) S.C.J. 373.

K. D. Chatterjee, for Appellant.

D. P. Singh, for Respondents.

G.R. *Appeals dismissed.*

[SUPREME COURT].

S. K. Das, M. Hidayatullah, K. C. Das Gupta, Calcutta Discount Co. *v.* I.T.O.
J. C. Shah and N. Rajagopala Ayyangar, JJ. C.A. No. 197 of 1954.
1st November, 1960.

Income-tax Act (XI of 1922), *section* 34—*Scope.*

(By majority).—In order to confer jurisdiction to issue a fresh notice under section 34 of Income-tax Act two conditions must be fulfilled: (1) Income-Tax Officer must have reasons to believe that there has been under-assessment or that some income has escaped assessment, and (2) he must have reasons to believe that this has occurred either by the failure by the assessee to make a return or by his omission or failure to disclose fully and truly all material facts necessary for his assessment. "We have therefore come to the conclusion that while the duty of the assessee is to dislcose fully and truly all primary facts, it does not extend beyond this ."

The Court further held "that the Income-Tax Officer who issued the notices did not have before him any non-disclosure of a material fact and so he could have no material before him for believing that there had been any material non-disclosure by reason of which an under-assessment had taken place." As the conditions for the issue of a notice under section 34 did not exist the notices were sent without jurisdiction.

Sachin Chaudhary, for Appellant.

K. N. Rajagopala Shastri, for Respondent.

G.R. *Appeal allowed.*

Balakrishna Iyer and Jagadisan, JJ. Marakkal *v.* Angappa Gounder.
17th August, 1960. Appeal No. 78 of 1957.

Hindu Succession Act (XXX of 1956)—*Applicability and scope—Unchastity of widow—If a bar to claim rights under.*

In order to claim the benefit of the succession as provided for under the Hindu Succession Act, 1956, the onus of proving that the last holder of the estate died after the date of coming into force of the Act is on the person claiming the benefit of the Act.

The scheme of the Act is to codify and provide for devolution of property by laying down a self-contained and exhaustive body of rules relating to succession.

Section 2 of the Act specifically provides that there will be no other disqualifications for succession except those mentioned in the Act itself. Hence the ancient rule of Hindu Law which disqualified an unchaste widow from inheriting her husband's property is no longer applicable to successions governed by the Hindu Succession Act, 1956.

S. Thyagaraja Ayyar, for Appellant.

K. S. Desikan and *K. Raman*, for Respondents.

R.M. ——— *Appeal dismissed.*

Rajamannar, C.J. and *Veeraswami, J.* Globe Theatres *v.* State of Madras.
18th August, 1960. W.A. No. 107 of 1960.

Madras Buildings (Lease and Rent Control) Act (*XXV of* 1949), *section* 13—*Exemption order under—Scope of.*

It cannot be said as a general rule that the power of exemption under section 13 of the Madras Buildings (Lease and Rent Control) Act, 1949, could be exercised only on grounds contained in the Act as valid grounds for eviction of tenants. Far from it if such grounds exist in any case resort must be had to the Tribunals established under the Act and if a party fails to get relief before such tribunals it may not be open to the Government to give relief by exemption under section 13 of the Act on the same grounds.

K. Rajah Ayyar and *K. S. Ramamurthi*, for Appellant.

R.M. ——— *Appeal dismissed.*

Ramachandra Iyer, J. Abdul Azeez *v.* Ramalingam.
18th August, 1960. S.A. No. 164 of 1958.

Contract—Contract of sale of goods—Stipulation as to mode of transport—If an essential term—Breach of—If would give the buyer the right to repudiate the contract.

Where a particular mode of transmission of goods stipulated in a contract of sale is expressly or impliedly agreed upon between the parties, then such stipulation as to mode of transport would be a material stipulation, breach of which would give the buyer a right to repudiate the contract.

V. S. Rangachari, for Appellant.

C. Vasudevan, for Respondent.

R.M. ——— *Appeal allowed.*

Ananthanarayanan, J. Sri Venkatakrishna High School *v.* Vangaswami Iyer.
24th August, 1960. Appeal No. 98 of 1957.

Madras Indebted Agriculturists (*Repayment of Debts*) *Act* (*I of* 1955), *section* 2 (*b*)—*'Debt'—Meaning of.*

Having regard to the object of the Madras Indebted Agriculturists (Repayment of Debts Act, 1955 and the context in which the expression 'due' occurs in the definition of the term 'debt' in section 2 (*b*) of the Act, the expression 'debt' would cover all debts due by an agriculturist, subject to the statutory exceptions, whether they were immediately enforceable or not by the creditors. 'Debt due' in its wider signification includes debts payable immediately or in future.

A. Subramania Ayyar and *S. Jayaraman*, for Appellant.

V. S. Ramakrishnan (amicus curiae), for Respondents.

R.M. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao, K. N. Wanchoo and J. R. Mudholkar, JJ.
7th November, 1960.

M. Peptiah *v.* Veeramallappa.
C.A. No. 387 of 1960.

Hyderabad Municipal and Town Committees Acts, 1951—New Hyderabad District Municipalities Act, 1956—Committee under the Old Act if continues to function.

By Majority.—The Supreme Court upheld the decision of the High Court that the old Committee will continue to function till a new Committee was elected. They had not ceased to be the members of the Committee. The Court however expressed the hope that the Government would take immediate steps to hold elections to the Committee so that the body constituted as early as 1953 under a different Act could be replaced by an elected body under the present Municipal Act.

P. A. Chaudhary, for Appellants.
P. Rama Reddy, for Respondents.
G.R. — *Appeal dismissed.*

[SUPREME COURT.]

S. J. Imam, J. L. Kapur, K. C. Das Gupta, Ragubar Dayal and N. Rajagopala Ayyangar, JJ.
11th November, 1960.

Manohar Lal *v.* State of Punjab.
Crl.A. No. 173 of 1956.

Punjab Trade Employees Act, 1940, section 7—Valid—Article 19 (1) (g) of the Constitution of India (1950).

The Trade Employees Act applies not only to shops employing other persons but also to the owner if he was engaged in work. The Court approved the terms of section 7 on the reasoning of the High Court that the terms could be justified on the ground that they were designed in the interest of the owner and that his health and welfare was a matter of interest to the general public.

" Apart from this the constitutionality of the impugned provision might be sustained on another ground also, *viz.*, with a view to avoiding of the evasion of provisions specially designed for protection of workmen employed. It may be pointed out that acts innocent in themselves may be prohibited and the restrictions in that regard would be reasonable, if the same were necessary to secure the efficient enforcement of valid provisions.

K. L. Arora, for Appellant.
N. S. Bindra, for Respondent.
G.R. — *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao, K. N. Wanchoo and J. R. Mudholkar, JJ.
11th November, 1960.

State of U.P. *v.* Basti Sugar Mills.
C.A. No. 790 of 1957.

U. P. Industrial Disputes Act, section 3—Bonus for past years—A directive of the Government—"Articles 14 and 19 of the Constitution."

" The normal way of dealing with an Industrial Dispute under the Act would be to have it dealt with judicially either by conciliation or by adjudication and the judicial process cannot be circumvented by resort to executive action ". The Government could however make an executive order even where an Industrial Dispute has arisen for the purpose of dealing with an emergency. According to the Court an order would be in the nature of a temporary or an interim order. The Court further observed that as the order was of a temporary nature it would be open to the aggrieved party to move the Government for a reference of the dispute for conciliation or adjudication. The question of violation of any fundamental right did not arise.

C. B. Aggarwala, for Appellant.
G. S. Pathak, for Respondent No. 1.
G.R. — *Appeal allowed.*

M—NRC

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar and K. N. Wanchoo, JJ.
14th November, 1960.

I. C. I. (Private) Ltd. *v.* Its Workmen and *vice versa.*
C.A. Nos. 471 & 472 of 1960.

Industrial Disputes Act (XIV of 1947)—Work on Sundays and Holidays—Age of retirement.

The Court held that the direction of the Tribunal in respect of work done on festival holidays was due to oversight and deprived the workmen of their right to a substituted holiday. This would deprive the workmen of a part of the benefits to which they are entitled under the pre-existing arrangement. Consequently the Court directed that in respect of work done on festival holidays the practice prevailing before the present dispute arose should continue.

Regarding the age of retirement the Court observed that in fixing the age of retirement no hard and fast rule could be laid down. In this case, however, the Court felt that the Tribunal had overlooked a material document filed by the workmen and, therefore, it examined this demand on merits. On the evidence on record the Court held that the age of retirement in the case of the workmen concerned in the present appeal should be raised to 60 from 55. The appeals were disposed of accordingly.

M. C. Setalvad, Attorney-General of India, for Appellants in C.A. No. 471 and Respondent No. 1 in C.A. No. 472.

C. L. Dudia, for Respondents in C.A. No. 471 and Appellants in C.A. No. 472.

G.R. *Appeal No.* 471 *dismissed*
Appeal No. 472 *allowed*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar and K. N. Wanchoo, JJ.
14th November, 1960.

Swadeshi Cotton Mills *v.* Rajeshwar Prasad.
C.A. No. 53 of 1958.

Industrial Disputes Act (XIV of 1947)—Can a compromise modify the Award.

So long as the appeal is pending in the Supreme Court the rights of the parties are not finally settled. " In such a case the industrial dispute would undoubtedly be pending and it would be idle to contend that an attempt to settle such a dispute and not to invite a decision of this Court would contravene the provisions of the Industrial Disputes Act ". The Court accordingly directed that the order should be drawn up in terms of the compromise.

S. P. Varma, for Appellant.

L. K. Jha, for Respondents.

G.R. *Order accordingly.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
15th November, 1960.

State of Punjab *v.* Sodhi Sukhdev Singh.
C.A. No. 337 of 1960.

Evidence Act (I of 1872), sections 123 and 162—Scope.

By majority.—" Reading sections 123 and 162 of the Evidence Act together the Court cannot hold any enquiry into the possible injury to public interest which may result from the disclosure of the document in question. This is a matter for the authority concerned to decide ; but the Court is competent, and indeed is bound,

to hold a preliminary enquiry and determine the validity of the objections to its production. This necessarily involves an enquiry into the question as to whether the evidence relates to an affair of State under section 123 or not." "The principle on which this departure can be and is justified is the principle of overriding and paramount character of public interest. . . . care has, however, to be taken that interests other than public do not masquerade in the garb of public interest".

Cases considered: L.R. (1931) A.C. 704, L.R. (1942) A.C. 624.

129 E.R. 907, 41 E.R. (Chancery) 550.

5 H. and N. 838, 1956 S.C. (H.L.) 1.

I.L.R. (1945) Bom. 122; I.L.R. (1944) 1 Cal. 410; I.L.R. (1940) Nag. 240; (1957) 1 An.W.R. 106: (1957) M.L.J. (Crl.) 19; I.L.R. (1957) A.P. 174; A.I.R. 1960 Pat. 192; A.I.R. 1960 All. 543.

N. S. Bindra, for Appellant.

Gopal Singh, for Respondent.

H. M. Seervai, Advocate-General, for Intervener, Bombay State.

G.R. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ. Pt. Jandulal *v.* State of Punjab.
16th November, 1960. C.A. No. 4 of 1960.

Land Acquisition Act (I of 1894)—Constitution of India, (1950), Article 31—"Public Purpose"—Notification under section 6 and Procedure under Chapter VII of the Act.

Following its earlier decision in Writ Petition No. 134 of 1959, decided on 8th August, 1960. (Reported in S.C.J. (Short Notes), September, 1960, at page 22 and (1960) 2 M.L.J. 25th August, 1960, at page 14), the Court agreed with the conclusion of the High Court that acquisition proceedings taken by the State were legal and valid. Therefore "the purpose for which the land was being acquired was a public purpose".

The Court further held that since a part of compensation for the acquisition was to come out of public revenue, the acquisition was not for a company only. It was not therefore necessary to go through the procedure prescribed by Chapter VII of the Act.

C. B. Aggarwala, for Appellant.

S. M. Sikri, Advocate-General, Punjab, for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar and K. N. Wanchoo, JJ. Ahmedabad Textile Industries Research Association *v.* State of Bombay.
17th November, 1960. C.A. No. 22 of 1959.

Industrial Disputes Act (XIV of 1947)—Meaning of an "Industry".

The establishment of Ahmedabad Textile Industries Research Association was "an activity systematically undertaken, its object is to render material service to the part of the Community (member-mills)".

Even though the employees raising the dispute did not contribute to the research yet they were part of the Association whose activities were inter-connected with the profits of all the member-mills. In these circumstances we have no hesitation in holding that appellant is carrying on an activity which clearly comes within the definition of the word 'Industry'.

M. C. Setalvad, Attorney-General of India, for Appellant.

Vidhiya Dhar Mahajan, for Respondent No. 1.

N. C. Shah, President, Engineering Mazdoor Sabha, for Respondent No. 3.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar and K. N. Wanchoo, JJ.
17th November, 1960.

Ram Padarth Mahto *v.* Mishri Sinha.
C.A. No. 388 of 1960.

Representation of the People Act (XLIII of 1951), *section* 7-A—*Member of a joint Hindu family having contract with Government if disqualified—Double constituency—Effect of declaration of Election as void.*

The present contract was for bailment of the stocks of grains and not for supplying goods or rendering of any services to the Government.

The Court held that the nomination papers of the appellant for the election to the Bihar Legislative Assembly from the Dalsingh Sarai (double member) constituency was wrongly rejected by the Returning Officer. The Court however remanded the case to the High Court to determine whether the election of Mishri Singh alone or both the respondents be set aside.

S. P. Verma, for Appellant.

L. K. Jha, for Respondents.

G.R. *Appeal allowed.*

Rajamannar, C.J., and Veeraswami, J.
1st August, 1960.

E. S. I. Corporation *v.* Ganapathia Pillai.
A.A.O. No. 18 of 1957.

Employees' State Insurance Act (XXXIV of 1948), *section* 2 (9)—*Employee—Meaning of—Right to demand contribution.*

Having regard to the definition of the term 'empolyee' in section 2 (9) of the Employees' State Insurance Act, 1948, only persons who are in some manner or another connected with the work of a factory, *viz.*, the manufacturing process, that, can be said to be employees within the meaning of the definition. The words 'incidental or preliminary to' in the definition has to be read in conjunction with the words 'with the work of the factory' so that the work done by the employee in question should be work of or incidental or preliminary to the work of, the factory. Hence persons employed as Secretary, clerk, or typist in the Managing Agent's Office of a mill, purely attending to administrative work will not come within the definition of 'employee' in the Act. But where such a person is in charge of disbursing payment of wages to the workers in the mill or maintaining the accounts of the mill, he will come within the definition as such work will, in a sense be, incidental to or connected with the work of the factory.

The Government Pleader, for Appellant.

T. R. Sangameswaran, for Respondent.

R.M. *Orders accordingly.*

Ramachandra Iyer, J. Krishnaswami Thevar *v.* Perumal Konar.
8th August, 1960. A.A.O. No. 293 of 1959.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948)—Object and scope of—Effect on pre-existing rights of ryots and zamindars—Rival claims to the title of the landholder—Jurisdiction of civil Court.

The Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), was enacted for the acquisition of the rights of landholders of certain estates in order to introduce the ryotwari tenure instead of the pre-existing zamindari or inam tenure. Hence all the incidents of the pre-existing tenure, which is abolished, will disappear with the abolition of the estate. It cannot be contended that the kudiwaram interest of ryots in ryoti land or the rights of the zamindar in private lands will be kept intact merely because under the Act the ryots in the quandom estate as well as the zamindar may be respectively entitled to patta in respect of kudiwaram or pannai lands. The special machinery provided under the Act is only to decide the nature and character of the lands for purposes of issuing patta. But where there are rival claims there is no power in the Settlement Officer or the Tribunal to adjudicate as to who among them would have a preferential right to the issue of patta. Such disputes will have to be decided by the civil Court. The fact that the Settlement Officer has granted patta under section 11 of the Act to one of the contending parties or even to a stranger cannot affect the jurisdiction of the civil Courts to adjudicate on the rival claims to title of the erstwhile ryoti land in a notified estate.

K. Raman, for Appellant.

R. Ekambaram, for Respondent.

R.M. *Appeal dismissed.*

Jagadisan, J. Alagarswami *v.* Andhoni.
16th September, 1960. S.A. No. 1184 of 1958.

Equitable estoppel—Doctrine of—What is—Landlord and tenant—Right of tenant to claim compensation for improvement—When arises.

The doctrine of 'equitable estoppel' familiarly known as the rule in *Ramsdon* v. *Dyson*, (L.R. 1 H.L. 129) is outside the statutory provisions of the Transfer of Property Act and its applicability is not excluded by section 51 of the said Act. The foundation upon which reposes the right of equity to intervene is either contract or the existence of some facts which the legal owner is estopped from denying.

A claim for compensation by a tenant against his landlord for improvements effected to the demised property may be rested on the doctrine of equitable estoppel though the law does not generally recognise any right in a lessee to improve the lease hold estate and claim compensation from the lessor for the same after the expiration of the lease. But mere standing by and failure to object by the lessor when the tenant builds on the demised land is not sufficient to attract the doctrine. What is required is that there should be active encouragement by the landlord and an implied promise that in case the tenant was ejected he would be paid compensation.

M. Natesan, for Appellant.

K. Parasaran, for Respondent.

R.M. *Appeal allowed.*

Jagadisan, J.
19th September, 1960.

Parthasarathy *v.* Municipal Council, Kumbakonam.
S.A. No. 1128 of 1958.

Madras District Municipalities Act (V of 1920), section 99 (4) and rule 32 (1), Schedule IV—' Carriage' if includes a cart—Illegal seizure of animal by Municipality—Municipality—If entitled to feeding charges during detention of such animal.

Rule 32 (1) of the rules framed under Schedule IV of the Madras District Municipalities Act, 1920, can only apply to a case where the original seizure of the animal by the Municipality was permissible in law. Where the seizure by the Municipality is itself illegal the Municipality cannot have any claim by way of reimbursement of the feeding charges in respect of such animal.

Obiter.—The presumption under section 99 (4) of the Act may not have application in respect of a 'cart' as the language of the section is confined only to a 'carriage'.

D. Ramaswami Ayyangar and *P. R. Varadarajan*, for Appellant.

K. S. Desikan and *K. Raman*, for Respondents.

R.M. ——— *Orders accordingly.*

Jagadisan, J.
5th October, 1960.

Chandrasekharan Pillai *v.* Thangavelu Pillai.
S.A. No. 1166 of 1958.

Madras Agriculturists' Relief Act (IV of 1938), section 13—Scaling down under—Scope of—Debt contracted after the Act—Stipulation to pay interest at a rate higher than the limit prescribed under the Act—Scope of relief.

Section 13 of the Madras Agriculturists' Relief Act, 1938, is no doubt different in pattern from sections 8 and 9 of the Act and it applies to all interest due on any debt incurred after the commencement of the Act. The scheme of the Act and the language of the section make it clear that a creditor is not entitled to take advantage of payments made by the debtor and deny him the beneficial effects of the Act. The words in section 13 of the Act that 'the Court shall scale down all interest' are of sufficiently wide amplitude to give jurisdiction to the Court to re-appropriate amounts paid by the debtor in excess of the statutory rate of interest so as to bring the transaction between the parties in conformity with the statute.

(1956) 2 M.L.J. 189, approved and followed.

(1958) 2 M.L.J. 568 (F.B.), explained.

Case-law reviewed.

V. Kunchithapatham, for Appellant.

V. C. Virarahagavan, for Respondent.

R.M. ——— *Appeal dismissed.*

Ramachandra Iyer, J.
6th October, 1960.

Kochadai Naidu *v.* Nagayaswami Naidu.
C.M.P. No. 5261 of 1960.

Civil Procedure Code (V of 1908), section 24 and Criminal Procedure Code (V of 1898), section 146—Proceedings transferred by a criminal Court to a civil Court under section 146 of the Criminal Procedure Code—Power of civil Court to transfer under section 24, Civil Procedure Code.

To a proceeding on a reference to a civil Court under section 146 of the Criminal Procedure Code relating to an issue as to possession of immoveable property, all provisions of the Civil Procedure Code will apply except those relating to costs appeals, reference, review, etc. It would follow that the provisions of section 24 of the Civil Procedure Code will also apply to such proceedings and a matter referred to a civil Court under section 146 of the Criminal Procedure Code by a Magistrate could be transferred to another civil Court by the superior Court under section 24 of the Civil Procedure Code.

[Scope of the provisions in section 146, Criminal Procedure Code, explained. 'Proceeding' within the meaning of section 24, Civil Procedure Code, considered.]

Case-law referred.

M. Natesan, for Petitioners.

V. C. Viraraghavan, G. Ramanujam, V. Ramaswami, S. V. Padmanabhaswami and *V. Narayanaswami*, for Respondents.

R.M. *Petition allowed.*

Veeraswami, J. Chinnaswami Pillai *v.* Thyagaraj Nainar.
7th October, 1960. A.A.O. No. 142 of 1959.

Civil Procedure Code (V of 1908), *section* 96 (3) *and Order* 23, *rule* 3—*Suit dismissed in view of adjustment pleaded—If appealable.*

Although the terms of a compromise between the parties to a suit was found established in a separate order on an application under Order 23, rule 3, Civil Procedure Code and the suit is dismissed, the basis of the decree in the suit is really the consent so established and the decree is not appealable as it is one passed by consent. The fact that one of the parties denied the consent in the proceedings under Order 23, rule 3 could make no difference when once the Court holds that the consent has been established and the remedy of the aggrieved party is to file an appeal against that order. Hence a decree passed on the basis of an order under Order 23, rule 3, Civil Procedure Code, recording the terms of compromise is also a decree passed with the consent of parties and is not appealable.

16 L.W. 155, followed.

27 M.L.J. 173, differed and explained.

Case-law referred.

M. R. Narayanaswami and *S. Natarajan*, for Appellant.

K. S. Desikan and *K. Raman*, for Respondent.

R.M. *Appeal allowed.*

Rajagopalan and Ramachandran, JJ. K. S. Venkataraman & Co. *v.* State.
10th October, 1960. C.C.C.A. No. 90 of 1957.

Madras General Sales Tax Act (IX of 1939), *section* 18-*B*—*Bar of suit under—Scope of—Suit to recover sales-tax paid under mistake of law—If maintainable* (See *now Madras Act I of* 1959).

The Madras General Sales Tax Act provides a complete machinery in which the question of legislative competence in respect of the particular matter involved could be considered and decided. When once assessment proceedings are commenced under the Act, the jurisdiction of the civil Courts to examine the validity of the assessment order is ousted under section 18-A of the Act and it makes no difference in principle whether the legislative provisions under which the tax was levied or purported to be levied was *intra vires* or *ultra vires* of the Legislature. A suit to recover sales-tax paid, even though it is under a mistake of law, is barred under section 18-B of Madras General Sales Tax Act, 1939 (*see* now Madras Act I of 1959) so long as the assessment order stood. In such a suit though no specific prayer is made for setting aside the assessment order the suit necessarily involves the setting aside of the assessment order and such a relief is barred under section 18-B of the Act.

T. T. Srinivasan and *A. N. Rangaswami*, for Appellant.

The Government Pleader and *N. S. Srinivasan*, for Respondent.

R.M. *Appeal dismissed.*

Jagadisan, J. Madhanavalli *v.* Thangavelu.
11th October, 1960. S.A. No. 1161 of 1958.

Hindu Widows' Re-marriage Act (*XV of* 1856)—*Forfeiture of widow's rights of inheritance on re-marriage—When would apply—Widow's remarriage invalid under law—If attracts the forfeiture—Madras Hindu Prevention of Bigamy and Divorce Act* (*VI of* 1949), *section* 4 (1). (*Since repealed by Hindu Marriage Act XXV of* 1955).

Where a Hindu widow's re-marriage is contrary to a statute like the Madras Act of 1949 (since repealed by Central Act XXV of 1955) and is void and *non est* she cannot incur the forfeiture under the Hindu Widow's Re-marriage Act, 1856, notwithstanding the purported re-marriage.

K. S. Desikan and *K. Raman*, for Appellant.

M. S. Venkatarama Iyer, S. Nagaraja Ayyar and *V. Krishnan*, for Respondent.

R.M. *Appeal dismissed.*

Ramachandra Iyer, J. Elumalai *v.* Sri Kandaswami Devasthanam.
12th October, 1960. C.R.P. No. 1488 of 1960.

Presidency Small Causes Courts Act (*XV of* 1882), *sections* 41, 43 *and* 48—*Suit in ejectment—Decree directing delivery of possession by a specified date—If could be executed after the expiry of the date fixed.*

Under section 48 of the Presidency Small Causes Courts Act all the provisions of the Civil Procedure Code including the provisions of Order 21, will apply to matters provided for in that chapter. Hence a decree in ejectment made by Presidency Small Causes Court under section 43 of the Act could be executed like any other decree within the period of limitation. It cannot be said that the Court will have no power to execute the decree for ejectment after the expiry of the date fixed under the order.

N. C. Srinivasan and *G. Ramanujam*, for Petitioner.

T. K. Subramania Pillai, S. Chockalingam and *R. N. Kothandaraman*, for Respondent.

R.M. *Petition dismissed.*

Srinivasan, J. Thayyan Padayachi *v.* Veluswami.
17th October, 1960. C.R.P. No. 2098 of 1959.

Civil Procedure Code (*V of* 1908), *Order* 21, *rules* 84, 85 *and* 86—*Power of Court to extend time for payment of balance of purchase price in Court-auction.*

The scheme of Order 21, rules 84 to 86 of the Code of Civil Procedure is quite clear. Where property is sold in Court-auction the auction-purchaser is to deposit 25 per cent. of the sale price under rule 84 and the balance is to be deposited within the time fixed under rule 85. In default of such payment the Court is empowered under rule 86 to forfeit the deposit less the expenses of the sale and the property should be re-sold. The Rule does not authorise the Court to grant any extension of time for the payment of the balance of purchase price.

N. R. Raghavachari, for Petitioner.

N. C. Srinivasan, for Respondent.

R.M. *Petition allowed.*

Ananthanarayanan and *Srinivasan, JJ.*
13*th July*, 1960.

Chandrasekharan, *In re.*
Crl. Rev. Case No. 1155 of 1959.
Crl. Rev. Pet. No. 1130 of 1959.

Madras Shops and Establishments Act (XXXVI of 1947), *section* 2 (3) *and* (*b*)—*Shop—What is.*

On a plain reading of section 2 (16) of the Madras Shops and Establishments Act, 1947, a premises devoted entirely to the repair of transport vehicles belonging to a person who is the proprietor of a transport company will be a ' shop ' even though no service is done to the public in the premises. The expression trade or business in the definition has to be interpreted in a fairly wide sense and would include any subsidiary part of a business which is integrally related to the main business.

S. Bhaskaran, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for the State.

R.M. ——— *Petition dismissed.*

Rajagopalan. J.
21*st July*. 1960.

Srinivasan *v.* Collector of Tirunelveli.
W.P. Nos. 586 and 641 of 1960.

Madras Cinemas Rugulation Act (IX of 1955), *sections* 5, 5-*A and Rule* 14 (2)—*Grant of 'no objection certificate'—Rule as to—Granting of no objection certificate in respect of two sites within half a mile of each other—Legality.*

It is no doubt true that in practice the grant of a 'no objection certificate' under the Madras Cinemas Regulation Act in regard to any site would normally lead to the construction of a touring cinema of the site within the period of six months when such certificate will be in force. But the grant of a 'no objection certificate' is only an approval of the site and the site by itself does not become a cinema within the meaning of Rule 14 (2) of the Madras Cinemas Regulation Rules. The prohibition in Rule 14 (2) comes into play at the time of granting the license in Form C. Approval of sites within half a mile of each other may be made without violating Rule 14 (2) as the approval of site is not the same as the licensing of a cinema. While it may be open to the authority to refuse the grant of a 'no objection certificate' to a site within half a mile of the previously certified site granting it will not contravene Rule 14 (2).

T. Chengalvaroyan, for Petitioner in W.P. No. 586 of 1960 and for 1st Respondent in W.P. No. 641 of 1960.

The Additional Government Pleader (*M. M. Ismail*), for Respondents 1 and 2 in W.P. No. 586 of 1960 and for 2nd Respondent in W.P. No. 641 of 1960.

R. M. Seshadri and *N. Thyagarajan,* for 3rd Respondent in W.P. No. 586 of 1960 and for Petitioner in W.P. No. 641 of 1960.

R.M. ——— *Orders accordingly.*

Ramachandra Iyer, J.
25*th July*, 1960.

Khader Mohideen Brothers *v.* Industrial Tribunal, Madras.
W. P. No. 580 of 1958.

Industrial Disputes Act (XIV of 1947), *section* 10—*Jurisdiction of tribunal in a reference under—If could adjudicate by consent of parties on a question not referred to it.*

An Industrial Tribunal is a creature of the statute and its jurisdiction would be limited to the matters referred to it under section 10 of the Industrial Disputes Act. Mere consent of parties cannot confer jurisdiction on the tribunal to adjudicate on a question which was not referred to it by the Government under section 10.

M. K. Nambiyar and *K. K. Venugopal,* for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *S. Mohan Kumaramangalam* and *K. V. Sankaran,* for Respondents.

R.M. ——— *Rule absolute.*

Somasundaram, J.
27th July, 1960.

Loganatha Naicker *v.* Kuppammal.
U.S.R. No. 4535 of 1960.

Madras Court-fees and Suits Valuation Act (*XIV of* 1955), *section* 72 (*xiii*)—*Person in duress—What amounts to.*

The exemptions from payment of Court-fee contemplated under section 72 (*xiii*) of the Madras Court-fees and Suits Valuation Act, 1955, in regard to persons under duress will not apply to persons who have been sent to jail in default of payment of fine imposed by a Court according to law. The duress contemplated under the clause is the kind of duress by the act of some person, which act will be contrary to law and which could be construed as a disability to pay the Court-fee. There can be no duress when the Court observes the provisions of the law as laid down by the Legislature.

Rangarajulu and *K. N. Balasubramanian*, for Petitioner.

The Government Pleader, for Respondent.

R.M. *Office note accepted.*

Ramachandra Iyer, J.
31*st August*, 1960.

Madras Pinjarapole *v.*
Labour Court, Madras.
W.P. No. 3 of 1960.

Industrial Disputes Act (*XIV of* 1947), *section* 2 (*j*)—*Industry—What is.*

Two essential requirements of an undertaking to constitute it an industry are that there should be an operation in which capital and labour co-operate and such operation should be for the satisfaction of human wants or desires. Where there is no element of trade but service is done purely out of instincts of pity or religion, it cannot be an undertaking except when such service is to satisfy human needs.

An institution which affords shelter and food to unserviceable animals till their natural death, out of purely humanitarian or religious objectives, like the Madras Pinjarapole, cannot be held to be an industry or undertaking within the meaning of section 2 (*j*) of the Industrial Disputes Act, 1947. The mere fact that some milk or manure is sold by the institution cannot change the nature of the institution and such sales are the natural and incidential result of the maintenance of the animals.

K. Rajah Ayyar, Kesavalal Tarawady and *K. Harihar an*, for Petitioner.

N. S. Varadachari, for Respondent.

R.M. *Order quashed.*

Rajamannar, C.J. and Ganapathia Pillai, J.
16*th September*, 1960.

Kothandaraman *v.* State of Madras.
W.A. No. 79 of 1958.

Constitution of India (1950), *Article* 311 (2)—*Applicability—Probationer discharged from service on enquiry—Protection under—If available.*

Though it is open to the Government to discharge a probationer, without holding any inquiry, on the ground that he was not a fit and proper person in which case Article 311 of the Constitution of India may have no application, yet if the Government chooses to start proceedings against a probationer and brand him as dishonest and incompetent he has a right to insist on the protection of Article 311 (2) of the Constitution.

S. Mohan Kumaramangalam, Md. Askar Ali and *C. Ramanathan*, for Appellant.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. *Appeal allowed.*

Rajagopalan, J.
23rd September, 1960.

Govindan *v.* State of Madras and another.
W.P. Nos. 420 and 639 of 1959.

Constitution of India (1950), *article* 226—Quo warranto—*Writ of—Nature of—Circumstances under which it could be declined.*

A writ of *quo warranto* is to operate in future and the Court is not concerned with the legality of the acts of the officer whose appointment is challenged as illegal but concerns itself only with the question whether he should continue to hold the office in future. If the concerned officer is subsequently conferred lawful authority to hold the appointment and any irregularity or illegality in the initial appointment is validly cured by the appointing authority, a writ of *quo warranto* cannot issue.

S. Mohan Kumaramanglam and *K. V. Sankaran*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. ——— *Petition dismissed.*

Veeraswami, J.
23rd September, 1960.

Elayaperumal *v.* Masilamani.
A.A.O.No. 125 of 1960.

Succession Act (*XXXIX of* 1925), *section* 388 (1) *and* (2)—*Appeal against an order of the District Munsif acting under—Forum.*

In view of the notification of the Government under section 388 (1) of the Indian Succession Act enabling the District Munsif to exercise the functions of a District Judge under section 371 of the Act, under the Proviso to sub-section (2) of section 388 an appeal against the order of the District Munsif exercising powers under sub-section (1) of the said section would lie only to the District Court and not to the High Court.

Per Curiam—Where under a misapprehension of the law an appeal has been wrongly filed in the High Court, it may be re-presented to the District Court on return, and the delay in presentation may be excused by the District Court.

T. V. Balakrishnan, for Appellant.

R. Desikan, for Respondent.

R.M. ——— *Order accordingly.*

[FULL BENCH.]

Rajamannar, C.J., Somasundaram and Veeraswami, JJ.
25th October, 1960.

Board of Revenue, Madras *v.* Simpsons & Mc. Chonachey Ltd., Madras.
R.C. No. 2 of 1959.

Stamp Act (*II of* 1899) (*as amended in Madras*)—*Article* 30 (*c*) *of Schedule I A—Lease stipulating for premiums or advance in addition to rent—Duty chargeable.*

Where under a lease deed the parties stipulate for payment of rent and also for advance for discharge of an encumbrance on the property, even though such advance is to be liquidated by a part of the rent payable every month, the document will be chargeable to duty under section 30 (*c*) of Schedule I of the Stamp Act as amended in Madras. The provision would be attracted even in cases when the rent is paid in advance and there is no other additional sum advanced.

I.L.R. 7 Mad. 203 ; 39 M.L.J. 495 : I.L.R. 44 Mad. 260 and I.L.R. 1952 Bom. 507, referred

The Government Pleader (*A. Alagiriswami*), for Applicant.

M. V. Gopalaratnam and *N. K. Pattabiraman*, for Respondent.

R.M. ——— *Reference answered accordingly.*

Ramachandra Iyer, J.
25th October, 1960.

Tiruchi Sri Rajam Transport Ltd. *v.* Labour Commissioner, Madurai.
W.P. No. 658 of 1959.

Industrial Disputes Act (*XIV of* 1947), *section* 33-*C* (2)—*Scope of—Discharged workman—If could invoke the aid of labour Court.*

Having regard to the object of the legislation and the context in which section 33-C (2) of the Industrial Disputes Act, 1947 came to be enacted it is clear that the section would enable a labour Cout to adjudicate on claims made not only by work-

men who are still under the employment of the management but also by discharged workmen as well. The expression 'any workman' would include a workman who would be entitled to any benefit conferred under the Act and should necessarily include a discharged worker as well. But where a workman was not in service even on the date of the dispute such a workman will not be one entitled to any benefit under a settlement or award which will be binding only on the persons specified in section 18 (3) of the Act. Such persons cannot invoke the aid of the labour Court under section 33-C (2) of the Act.

P. V. Marthandam, for Petitioner.

B. Lakshmi Narayana Reddy for Respondent.

R.M. —— *Rule absolute.*

Rajamannar, C.J., and Venkatadri, J. State of Madras *v.* Umayal Achi.

27th October, 1960. L.P.A. No. 107 of 1959.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948)*—Rules under section* 3 *and rule* 10*—Suit for an injunction against the Government from applying the provisions of the Land Encroachment Act arbitrarily—If maintainable.*

Rule 10 of the Rules framed under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 relating to taking of possession of land by the Government makes it clear that the provisions of the Land Encroachment Act, 1905 could be invoked only in cases where an encoachment has taken place after an estate has been notified. It cannot apply to cases where persons have been in possession even prior to the notification. A suit to restrain the Government from arbitrarily applying the procedure under the rule is cognisable by the civil Courts and their jurisdiction is not in any way ousted by the scheme of section 3 of the Act.

The Government Pleader and *V Ramaswami*, for Appellant.

V. Vedanthachari and *P. S. Sarangapani Ayyangar*, for Respondent.

R.M. —— *Appeal dismissed.*

Rajagopalan and Srinivasan, JJ. Ouchterlony Valley Estates, Ltd. *v.* Government of Madras.

4th November, 1960. T.R.C. No. 110 of 1957.

Madras Agricultural Income-tax Act (V of 1955), *section* 5 (*g*)*—Permissible deductions—Expenditure incurred in maintaining immature coffee plants in a plantation—If of a revenue nature.*

The expenditure incurred in the upkeep of immature plants in a coffee and tea estate will be expenses of cultivating the crop and will be allowable deductions un-under section 5 (*g*) of the Madras Agricultural Income-tax Act.

5 Tax Cases 529 followed.

The expression 'cultivating the crop from which the agricultural income is derived' is not restricted in the context to the particular tree or plant from which the yield is derived but the entire plantation consisting of both mature and immature trees and plants.

M. Subbaraya Ayyar, V. Sethuraman and *S. Padmanabhan*, for Petitioner.

The Government Pleader, for Respondent.

R.M. —— *Petition allowed.*

Somasundaram, J. Ganesa Pillai, *In re.*

9th November, 1960. Crl.Rev. C. No. 329 of 1960.
Crl.Rev. P. No. 321 of 1960.

Criminal Procedure Code (V of 1898), *section* 528 (2)*—'Transfer for inquiry or trial'—Transferee Court—Duty to examine witnesses* de novo.

Where a transfer of a case is effected under section 528 (2) of the Criminal Procedure Code, the magistrate to whom it is transferred must examine the witnesses *do novo.* There must be a fresh trial and the expression 'for inquiry or trial' means full trial and not a partial trial based on the evidence partly recorded by him and partly recorded by the magistrate from whose file the case was transferred.

R. Sundaravaradan and *P. S. Nasasimhan*, for Petitioner.

M. Narayanamurthi, for the Public Prosecutor.

R.M. —— *Orders acordingly*

[END OF VOLUME (1960) II M.L.J. (N.R.C.).]